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10 *TAE K. KAI, Trustees of the Kai Family 1998 Trust*

11 **UNITED STATES BANKRUPTCY COURT**

12 **NORTHERN DISTRICT OF CALIFORNIA**

13 **SAN JOSE DIVISION**

14 In re:

15 HAWAIIAN RIVERBEND, LLC,

16 Debtor.

Case No.: 22-50314-SLJ

Chapter 11 (Sub-Chapter V)

17 **REQUEST FOR JUDICIAL NOTICE**

18 KENNETH Y. KAI and TAE K. KAI, Trustees of the Kai Family 1998 Trust (“Kai”),
19 creditors and interested parties in the above-captioned Case No.: 22-50314-SLJ (“Bankruptcy
20 Case”), request the Court take judicial notice under Federal Rule of Evidence 201 of the following:

21 **Documents filed in the Hawaiian Riverbend, LLC Chapter 11 Bankruptcy, Case No. 16-**
22 **00348, filed in U. S. Bankruptcy Court for the District of Hawaii**

Exhibit	Description
1	Order Confirming Second Amended Plan of Reorganization Dated October 6, 2016, and attached Plan. [DKT # 135]
2	Order Dismissing Case Filed on February 2, 2018 [DKT # 195]

24 **Documents filed in the Michael Haroutun Miroyan Chapter 13 Bankruptcy, Case No. 18-**
25 **52601, filed in U. S. Bankruptcy Court for the Northern District of California**

3	Motion for Relief from Stay filed on December 29, 2018 [DKT # 18]
4	Supplemental Brief of the Kai Family Trust in Support of Motion for Relief from Stay filed on February 8, 2019 [DKT # 55]
5	Order Granting Motion for Relief from Stay and Awarding in Rem Relief Under 11 U.S.C. §362(D)(4) filed on March 15, 2019 [DKT # 70]

Documents filed in the Michael Haroutun Miroyan Chapter 13 Bankruptcy, Case No. 22-50339, filed in U. S. Bankruptcy Court for the Northern District of California

6	Trustee's Objection to Confirmation with Certificate of Service filed on June 2, 2022 [DKT # 23]
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Documents filed in Michael Miroyan v. Tae Kai, et al., Case No. 5:19-cv-03626-NC filed in the U.S. District Court for the Northern District of California

7	Complaint filed on June 21, 2019 [DKT # 1]
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8	Order Dismissing Case filed on November 5, 2019 [DKT # 30]
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Under Fed. R. Evid. 201, the court can judicially notice "[o]fficial acts of the legislative, executive, and judicial departments of the United States," and "[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy." Because court filings are "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned," pleadings filed and orders issued in related litigation are proper subjects of judicial notice under Rule 201. See *Reyn's Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n. 6 (9th Cir. 2006). See also *In re Zulueta*, 520 Fed. Appx. 558, 559 (9th Cir. May 22, 2013) (Unpub. Disp.) (taking judicial notice of the docket in an underlying bankruptcy proceedings); *Asdar Group v. Pillsbury, Madison & Sutro*, 99 F.3d 289, 290 n. 1 (9th Cir. 1996) (court may take judicial notice of the pleadings and court orders in earlier related proceedings); *Rosal v. First Fed. Bank of California*, 671 F.Supp.2d 1111, 1120-21 (N.D. Cal. 2009) (taking judicial notice of plaintiff's bankruptcy petition, an order granting a motion for relief from the automatic stay, and the bankruptcy court's order of dismissal); *Retired Employees Ass'n of Orange County, Inc. v. County of Orange*, 632 F.Supp.2d 983, 985 (C.D. Cal. 2009) (taking judicial notice of a bankruptcy court order under Rule 201).

Kai therefore requests the Court take judicial notice of Exhibits 1 – 8, which are all pleadings and court orders in other cases involving the above-captioned Debtor and/or its principal, Michael H. Miroyan.

Date: June 4, 2022

/s/ Wayne A. Silver

Wayne A. Silver, attorney for *KENNETH Y. KAI and TAE K. KAI, Trustees of the Kai Family 1998 Trust*

EXHIBIT ONE

Date Signed:
December 23, 2016



SO ORDERED.

A handwritten signature in black ink, appearing to read "R. Faris", is written over a horizontal line.

Robert J. Faris
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF HAWAII

In re:

HAWAIIAN RIVERBEND, LLC,
Debtor and Debtor in Possession.

Case No. 16-00348
(Chapter 11)

Date: November 28, 2016
Time: 9:30 a.m.
Judge: Hon. Robert J. Faris

[Relates to Docket No. 110]

ORDER CONFIRMING SECOND AMENDED
PLAN OF REORGANIZATION DATED OCTOBER 6, 2016

The Debtor's Second Amended Plan of Reorganization Dated October 6, 2016, filed herein on October 7, 2016, as docket no. 110 (the "Plan") came on for approval before the Honorable Robert J. Faris on November 28, 2016 (the "Confirmation Hearing"). Chuck C. Choi, Esq. appeared on behalf of the Debtor. Curtis B. Ching, Esq. appeared on behalf of the Office of the United States Trustee. Matthew C. Shannon, Esq. appeared on behalf of the Kai Trust. David C. Farmer, Esq. appeared telephonically on behalf of Cory Tereick.

The Court having reviewed the Plan and the statements and arguments of counsel at the hearing, as well as the record in this case, and good cause appearing therefore,

The Court finds that: (a) it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

IT IS HEREBY ORDERED THAT:

1. The Plan¹, attached hereto as Exhibit A and incorporated herein by reference, is confirmed pursuant to Bankruptcy Code Section 1129, as amended by this Order.

2. The Plan is hereby amended as follows:

A. Proof of Claim no. 5 in the Claim Register filed by the Kai Family 1998 Trust (the “Kai Trust”) on August 22, 2016, in the total amount of \$1,248,739.72 (the “Kai Secured Claims”), shall be deemed an Allowed Claim for all purposes in this Chapter 11 Case, and the Counterclaims asserted by the Debtor against the Kai Trust in that certain lawsuit entitled *Kenneth Y. Kai, Trustee of the Kai Family 1998 Trust, et al. v. Hawaiian Riverbend, LLC*, In the Third Circuit Court of the Circuit Courts of the State of Hawaii, Civil No. 3CC 15-1-0164K, shall be deemed waived and extinguished for all purposes.

¹ Capitalized terms not herein defined shall have the meaning set forth in the Plan.

B. This Order constitutes authorization for the Debtor to sell and convey Parcel 21, Parcel 52 and Parcel 53 (collectively, the “Parcels”) without further Court order, provided, however, (a) any recorded Lien against any of the foregoing Parcels must be satisfied in full at closing absent further Court order; (b) the Court shall retain jurisdiction over the amounts necessary to satisfy any recorded Lien, as well as the allocation of net sale proceeds from any such sale(s); and

C. The real estate agent and the Debtor and its principals are instructed to promptly send to counsel of record for the Kai Trust and Cory Tereick any written bona fide offer for the sale of any the Parcel 52 or Parcel 53. Neither Kai Trust nor Cory Tereick (or their respective agents or representatives) shall contact either the offering parties or the real estate agent without either first obtaining the Debtor’s express advance approval or a specific Court order allowing such contact.

Plan is Binding

3. The amounts, priorities, secured status, and classifications of Claims and Equity Interests for purposes of the distributions to be made under the Plan shall be governed solely by the terms of the Plan. The amounts, priorities, secured status, and classification set forth on the Ballots tendered to or returned by the

creditors of the Debtor in connection with voting on the Plan (a) were set forth on the Ballots solely for purposes of voting to accept or reject the Plan, (b) do not necessarily represent, and in no event shall be deemed to modify or otherwise affect, the actual amount, priority, secured status, or classification of such claims and Equity Interests under the Plan for distribution purposes, and (c) shall not be binding on, or used as evidence against, the Debtor for any purpose other than with respect to voting on the Plan.

4. The Plan and its provisions shall be binding upon the Debtor, any entity acquiring or receiving property or a distribution under the Plan, and any holder of an Administrative Claim or Claim against or interest in the Debtor, including all federal, state, and local governmental entities and fiscal intermediaries thereof, whether or not (i) the Administrative Claim, Claim, or Equity Interest of such holder is impaired under the Plan, (ii) such holder or entity has accepted the Plan, or (iii) such holder or entity has filed a proof of claim , demand for payment, or appeared in the Case.

Authorizations

5. The Debtor and its directors, officers, partners, members, managers, agents, and attorneys are each hereby authorized and empowered, and where required by the Plan, ordered (a) to take such actions as may be necessary or appropriate to execute, implement and consummate the Plan, (b) to issue, execute,

deliver, file and record such contracts, instruments, releases, agreements, documents, and securities referred to in the Plan, or required to implement and consummate the Plan pursuant to its terms, (c) to perform under and comply with the terms of the Plan, and (d) to take any or all corporate, partnership or limited liability company actions authorized to be taken pursuant to the Plan, or pursuant to any contract, instrument, release, agreement, document or security in connection therewith, or other document, whether or not specifically referred to in the Plan. Upon execution, all such documents shall be valid and binding, as necessary or appropriate, be accepted by each of the respective state filing offices and recorded in accordance with applicable state law, and become effective in accordance with their terms.

6. Pursuant to Bankruptcy Code section 1146(a) and this Confirmation Order: (a) the issuance, transfer, or exchange of notes or equity securities under the Plan; or (b) the creation of any mortgage or other security interest in furtherance of, or in connection with, the Plan shall not be subject to any stamp tax, recording tax, conveyance tax, personal property transfer tax, real estate transfer tax, sales or use tax, or other similar tax. The Debtor is hereby authorized to serve upon all filing and recording officers a notice in connection with the filing and recording of any such documents in accordance with the Plan, to evidence and implement this paragraph. The appropriate state or local government filing and recording officers

are hereby directed to accept for filing or recording all documents of transfer to be filed and recorded in accordance with this Plan and the exhibits thereto, without payment of any such tax or government assessment, and without the presentation of any affidavits, instruments, or returns otherwise required for recording, other than this Confirmation Order. The Bankruptcy Court retains jurisdiction to enforce the foregoing direction, by contempt proceedings or otherwise.

7. Any Liens granted under the Plan shall be deemed perfected without recordation, the same as though recorded, without any further action required of the person to whom such Lien is granted under the Plan.

Bar Dates

8. Except as otherwise provided herein, unless previously filed or paid, requests for payment of Administrative Expense Claims (other than Ordinary Course Administrative Claims) must be filed and served on the Debtor no later than 60 days after the Effective Date ("General Administrative Claims Bar Date"); provided, however, that the General Administrative Claims Bar Date may be extended from time to time upon the mutual agreement of the Reorganized Debtor and the applicable holder of an Administrative Expense Claim, or pursuant to an order of the Bankruptcy Court after notice to the Notice Parties. Holders of Administrative Expense Claims that are required to file a request for payment of such Administrative Expense Claims and that do not file such a request by the

applicable Administrative Claims Bar Date will be forever barred from asserting such Administrative Expense Claims against the Debtor, and such Administrative Expense Claims will be deemed discharged as of the Effective Date. Unless extended by the Bankruptcy Court or by agreement of the Reorganized Debtor and the filing party, objections to such requests must be filed and served on the Notice Parties, and the requesting party by the earlier of (A) 120 days after the Effective Date or (B) 60 days after the filing of the applicable request for payment of Administrative Expense Claims.

9. Professionals or other Persons asserting a Professional Fee Claim for services rendered to the Estate before the Effective Date must file and serve on the Reorganized Debtor an application for final allowance of such Professional Fee Claim, as it relates to services provided to the Estate prior to the Effective Date, no later than 60 days after the Effective Date (“Professional Fee Claims Bar Date”); provided, however, that the Professional Fee Claims Bar Date may be extended from time to time upon the mutual agreement of the Reorganized Debtor and the applicable Professional Person or pursuant to an order of the Bankruptcy Court after notice to the Notice Parties. Unless extended by the Bankruptcy Court, objections to any Professional Fee Claim must be filed and served on the Notice Parties and the requesting party no later than 30 days after the filing of the applicable request for payment of the Professional Fee Claim. If a request for

payment of a Professional Fee Claim is not made by the applicable Professional Fee Claim Bar Date, such claim will be forever barred and such Professional Fee Claims will be deemed discharged as of the Effective Date. Professional Persons may obtain payment of reasonable fees and expenses incurred subsequent to the Effective Date for the preparation and prosecution of an application for final allowance of a Professional Fee Claim by submitting an invoice to the Reorganized Debtor on or after the date that the Bankruptcy Court enters an order granting such application; provided, however, that (a) the Reorganized Debtor shall have the right to object any such invoice, (b) to the extent that Reorganized Debtor and the applicable Professional Person are unable to resolve any such objection, the matter may be set for hearing before the Bankruptcy Court on not less than thirty (30) days notice, and (c) the Reorganized Debtor shall not be required to pay any particular fees and expenses that are the subject of an unresolved objection unless and until the Bankruptcy Court so orders.

10. Any request for payment of an Administrative Expense Claim asserted by a governmental unit for a tax claim ("Administrative Tax Claim") must be filed and served on the Reorganized Debtor no later than 60 days after the Effective Date ("Administrative Tax Claims Bar Date"), provided, however, that the Administrative Tax Claim Bar Date may be extended from time to time upon the mutual agreement of the Reorganized Debtor and the applicable governmental

unit, or pursuant to an order of the Bankruptcy Court after notice to the Notice Parties. If a request for payment of an Administrative Tax Claim is not made by the applicable Administrative Tax Claim Bar Date, such claim will be forever barred against the Reorganized Debtor and such Administrative Tax Claims will be deemed discharged as of the Effective Date. Unless extended by the Bankruptcy Court, objections to any such Filed Administrative Tax Claims must be filed and served on the Notice Parties and the requesting party by the earlier of (A) 120 days after the Effective Date or (B) 60 days after the filing of the applicable request for payment of an Administrative Tax Expense Claim.

Vesting of Assets

11. All of the Debtor's assets shall revert in the Reorganized Debtor on the Effective Date.

Estate Causes of Action

12. On the Effective Date, the Reorganized Debtor shall have the full power and authority to prosecute compromise or otherwise resolve any and all claims and Rights of Action, including but not limited to, all claims and causes of action arising under or related to the Bankruptcy Code.

13. As of the Effective Date, the Reorganized Debtor shall have authority to investigate, administer, monitor, implement, litigate and settle all disputed or unresolved Claims and Administrative Expense Claims. Nothing herein shall

preclude or limit the right or authority of any other party in interest with standing under the Bankruptcy Code to object to any Claim or Administrative Expense Claim.

Effective Date and Discharge

14. The Effective Date shall occur on the second business day following the satisfaction of the conditions precedent to the occurrence of the Effective Date as set forth in Section VII of the Plan. The Debtor shall file a Notice of Effective Date as soon after the Effective Date as practical and shall serve a copy of the Notice of Effective Date on the Master Service List.

15. The Debtor's discharge under the Bankruptcy Code, the Plan, and this Order shall occur on the Effective Date. Except as provided in the Plan or this Confirmation Order, as of the Effective Date the rights afforded under the Plan and the treatment of Claims, Administrative Expense Claims and Equity Interests under the Plan will be in exchange for an in complete satisfaction, discharge and release of all Claims, Administrative Expense Claims and Equity Interests, including any interest accrued on claims from the commencement of the Chapter 11 Case. As of the Effective Date, except as provided in the Plan or this Confirmation Order, Confirmation will discharge the Debtor from all Claims, Administrative Expense Claims or other debts that arose before the Confirmation Date and all debts of the kind specified in sections 502(g), 502(h) or 502(i) of the Bankruptcy Code,

whether or not (a) a proof of Claim based on such debt is filed or deemed filed pursuant to section 501 of the Bankruptcy Code, (b) a Claim based on such debt is allowed pursuant to section 502 of the Bankruptcy Code or (c) the holder of a Claim or Administrative Expense Claim based on such debt has accepted the Plan.

16. As of the Effective Date, except as provided in the Plan or in this Confirmation Order, all persons shall be precluded from asserting against the Reorganized Debtor, any other or further Claims, Administrative Expense Claims, debts, rights, causes of action, liabilities, or equity interests of the Debtor, based on any act, omission, transaction or other activity of any kind or nature that occurred before the Effective Date. In accordance with the foregoing, except as provided in the Plan or herein, this Confirmation Order shall be a judicial determination of discharge of all such Claims, Administrative Expense Claims and other debts and liabilities against the Reorganized Debtor, pursuant to sections 524 and 1141 of the Bankruptcy Code, and such discharge shall void any judgment obtained against the Debtor at any time, to the extent that such judgment relates to a discharged liability, Claim, or Administrative Expense Claim. Notwithstanding the foregoing, federal and state governmental agencies shall not be subject to the foregoing injunction with respect to the exercise and enforcement of any of their respective regulatory or police rights and powers.

Executory Contracts

17. The assumption and assignment and, as appropriate, cure of assumed executory contracts, as provided for under the Plan, pursuant to Bankruptcy Court section 365, as of the Effective Date, is hereby approved.

18. The rejection of executory contracts and unexpired leases as provided for under the Plan is hereby approved pursuant to Bankruptcy Code sections 365 and 1123(b)(2). Each party to any rejected executory contract or unexpired lease shall file any claim for damages arising from that rejection not later than thirty (30) days after mailing of the Notice of Effective Date.

Exculpations, Indemnities and Injunctions

19. The scope of liability, release, exculpation, indemnification, and injunction provisions contained in the Plan (including but not limited to Sections 10.6.1 and 10.6.2) shall be effective and binding upon all persons and entities to the full extent provided in the Plan, except as otherwise provided for herein.

20. Except as provided in the Plan or herein, as of the Effective Date, all Persons that have held, currently hold or may hold a Claim or other debt or liability against the Debtor, are hereby permanently enjoined from taking any of the following actions on account of any such discharged or satisfied Claims, debts or liabilities, or Equity Interests: (a) commencing or continuing in any manner any action or other proceeding against the Debtor, the Reorganized Debtor, the Estate,

or their respective property, other than to enforce any right pursuant to the Plan to a distribution; (b) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order against the Debtor, the Estate, or their respective property, other than as permitted pursuant to (a) above; (c) creating, perfecting or enforcing any Lien or encumbrance against the Debtor, the Reorganized Debtor, the Estate, or their respective property; (d) asserting a setoff, right of subrogation or recoupment of any kind against any debt, liability or obligation due to the Debtor; and (e) commencing or continuing any action, in any manner, in any place, that does not comply with or is inconsistent with the provisions of the Plan, provided however, that nothing herein shall affect or otherwise impair the existing right of setoff by the United States of mutual pre-petition obligations. Notwithstanding the foregoing, federal and state governmental agencies shall not be subject to the foregoing injunction with respect to the exercise and enforcement of any of their respective regulatory or police rights and powers.

21. To the maximum extent permitted by law and as of the Effective Date, none of the Debtor, the Estate, nor any of their employees, officers, directors, agents, members, managers, representatives, or the professionals employed or retained by any of them, whether or not by Bankruptcy Court order (each, an "Exculpated Person"), shall have or incur liability to any Person for an act taken or omission made, in good faith (which shall not include willful or reckless

misconduct) after the Petition Date, in connection with or related to the Chapter 11 Case, formulation of the Plan, the Disclosure Statement, or a contract, instrument, or other agreement or document created in connection therewith, the solicitation of acceptances for or confirmation of the Plan, or the consummation and implementation of the Plan contemplated therein; provided, however, nothing herein shall limit or release any liability of any Person from direct liability arising from the operation of the Debtor in the ordinary course of business; provided, further, however, any such liability of the Debtor shall be limited to a claim which if an Allowed Claim shall be treated under the Plan. Each Exculpated Person shall in all respects be entitled to reasonably rely on the advice of counsel with respect to their duties and responsibilities under the Plan. This Confirmation Order constitutes a judicial determination that the exculpation provision contained in this Section is necessary to, inter alia, facilitate Confirmation and feasibility and to minimize potential claims arising after the Effective Date for indemnity, reimbursement or contribution from the Debtor or the Estate. This Confirmation Order constitutes a res judicata determination of the matters included in the exculpation provisions of the Plan.

United States Trustee Fees

22. All quarterly fees due and payable to the Office of the United States Trustee pursuant to section 1930(a)(6) of title 28 of the United States Code shall be

duly paid in full on or before the Effective Date, as required by section 1129(a)(12) of the Bankruptcy Code. The Reorganized Debtor shall be responsible for timely payment of such quarterly fees due and payable until the Bankruptcy Case is closed. Until the Chapter 11 Case is closed, the Reorganized Debtor shall file with the Office of the United States Trustee quarterly financial reports specifying all “disbursements” made and shall make all payments based upon such disbursements as required by applicable law.

Enforceability

23. Pursuant to sections 1123(a) and 1142(a) of the Bankruptcy Code and the provisions of this Confirmation Order, the Plan and the Plan Supplement shall apply and be enforceable notwithstanding any otherwise applicable nonbankruptcy law.

24. Each term and provision of the Plan is hereby deemed to be valid and enforceable pursuant to its terms, except as modified by this Order.

Other Matters

25. To the extent of any inconsistency between the provisions of the Plan and this Confirmation Order, the terms contained in this Confirmation Order shall govern. The provisions of this Confirmation order are integrated with each other and are nonseverable and mutually dependent unless expressly stated otherwise by further order of this Bankruptcy Court.

END OF ORDER

Approved as to form:

/s/ Curtis B. Ching
CURTIS B. CHING
Attorney for the Office of the U.S. Trustee

/s/ Matthew C. Shannon
MATTHEW C. SHANNON
Attorney for Kai Family Trust

/s/ David C. Farmer
DAVID C. FARMER
Attorney for Cory Tereick

Submitted by:

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Attorneys for Debtor
and Debtor-in-Possession

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF HAWAII

In re

HAWAIIAN RIVERBEND, LLC,

Debtor and
Debtor-in-possession.

Case No. 16-00348

(Chapter 11)

DEBTOR'S SECOND AMENDED PLAN OF REORGANIZATION DATED AS
OF OCTOBER 6 2016

HAWAIIAN RIVERBEND, LLC, debtor and debtor-in-possession herein
("Debtor") proposes the following chapter 11 plan pursuant to section 1121(a) of
the Bankruptcy Code.

EXHIBIT A

I.

DEFINITIONS AND RULES OF CONSTRUCTION

1. Defined Terms.

As used herein, the following terms have the respective meanings specified below (such meanings to be equally applicable to both the singular and plural, and masculine and feminine, forms of the terms defined):

1.1. “Administrative Claims Bar Date” has the meaning set forth in Section I.2.3 below.

1.2. “Administrative Expense Claim” means a claim that is for payment of any cost or expense of administration of the Chapter 11 Case, allowable under sections 503(b) and 507(a)(2) of the Bankruptcy Code, including, without limitation, any actual and necessary post-petition expense of preserving the Estate, any actual and necessary post-petition expense of operating the business of the Debtor in Possession, all compensation or reimbursement of expenses to the extent allowed by the Bankruptcy Court under section 330 or 503 of the Bankruptcy Code, and any fees or charges assessed against the Estate of the Debtor under Section 1930 of chapter 123 of title 28 of the United States Code.

1.3. “Allowed Administrative Expense Claim” means an Administrative Expense Claim: (a) for which a request for payment is Filed on or before the Administrative Claims Bar Date and as to which no objection to such

Administrative Expense Claim is in the amount set forth in such request; (b) that is allowed pursuant to a Final Order, in the amount set forth therein; or (c) is an Ordinary Course Administrative Expense as to which no objection has been Filed. Unless otherwise specified herein or by Final Order of the Bankruptcy Court, the amount of any Allowed Administrative Expense Claim shall not include interest on such Administrative Expense Claim accruing from and after the Petition Date.

1.4. “Allowed Claim” means, except as otherwise provided herein or by Final Order of the Bankruptcy Court, a Claim, proof of which was timely and properly Filed or, if no proof of claim was Filed, which has been or hereafter is listed by the Debtor in his respective Schedules as liquidated in amount and not disputed or contingent, and, in either case, as to which no objection to the allowance thereof, or request for estimation, has been interposed, and that is not otherwise a Disputed Claim.

1.5. “Allowed General Unsecured Claim” means a General Unsecured Claim to the extent it is or has become an Allowed Claim.

1.6. “Allowed Secured Claim” means a Secured Claim to the extent it is or has become an Allowed Claim.

1.7. “Amended First Kai Note” means that alleged First Amendment of Promissory Note dated August 8, 2013 by the Debtor in favor of the Kai Trust in the principal amount of \$840,000.00.

1.8. “Amended First Kai Mortgage” means that certain mortgage recorded against Parcel 21 in the Bureau as Document No. 2010-062606 by the Debtor in favor of the Kai Trust, as amended by that certain instrument recorded in the Bureau on August 8, 2013 as Document No. A-50700518 for the principal amount of \$809,504.00.

1.9. “Bankruptcy Code” means Title 11 of the United States Code, 11 U.S.C. § 101 *et seq.*, as now in effect or hereafter amended, and as applicable to the Chapter 11 Case.

1.10. “Bankruptcy Court” or “Court” means the United States Bankruptcy Court for the District of Hawaii or, in the event such court ceases to exercise jurisdiction over the Chapter 11 Case, such other court that exercises jurisdiction over the Chapter 11 Case.

1.11. “Bankruptcy Rules” means, collectively, (i) the Federal Rules of Bankruptcy Procedure, as amended from time to time, as applicable to the Chapter 11 Case, and (ii) the Local Bankruptcy Rules applicable to cases pending before the Bankruptcy Court, as now in effect or hereafter amended.

1.12. “Bureau” means the Bureau of Conveyances for the State of Hawaii.

1.13. “Business” means the operation of the business by the Debtor.

1.14. "Business Day" means any day which is not a Saturday, a Sunday, or a "legal holiday" as defined in Bankruptcy Rule 9006(a).

1.15. "Cash" means legal tender of the United States of America and equivalents thereof.

1.16. "Chapter 11 Case" means the case under chapter 11 of the Bankruptcy Code that was commenced by the filing of a voluntary petition on April 4, 2016, before the Bankruptcy Court, and which case is styled, *In re Hawaiian Riverbend, LLC*, and assigned Bk. No. 16-00348 (Chapter 11).

1.17. "Chen Secured Note" means that certain promissory note dated on or about October 10, 2013 in the original principal amount of \$175,000.00 by the Debtor in favor of Gang Chen.

1.18. "Chen Mortgage" means that certain mortgage executed by Debtor in favor of the Gang Chen recorded against Parcel 21 as security for the Chen Secured Note recorded on October 15, 2013 in the Bureau as Document No. A-50360170.

1.19. "Claim" means a "claim," as defined in section 101(5) of the Bankruptcy Code, against the Debtor.

1.20. "Class" means one of the Classes of Claims or Classes of Equity Interests designated in Article II of the Plan.

1.21. “Confirmation” means the entry of the Confirmation Order on the docket of the Chapter 11 Case.

1.22. “Confirmation Date” means the date on which the Confirmation Order is entered on the docket for the Chapter 11 Case within the meaning of Bankruptcy Rules 5003 and 9021.

1.23. “Confirmation Hearing” means the hearing held by the Bankruptcy Court on Confirmation of the Plan as such hearing may be continued from time to time.

1.24. “Confirmation Order” means the order of the Bankruptcy Court confirming the Plan in accordance with the provisions of chapter 11 of the Bankruptcy Code.

1.25. “Counterclaims” means the counterclaims asserted by the Debtor against the Kai Trust in that certain lawsuit entitled *Kenneth Y. Kai, Trustee of the Kai Family 1998 Trust, et al. v. Hawaiian Riverbend, LLC*, In the Third Circuit Court of the Circuit Courts of the State of Hawaii, Civil No. 3CC 15-1-0164K.

1.26. “Debtor” means Hawaiian Riverbend LLC.

1.27. “Disclosure Statement” means the written disclosure statement that relates to the Plan, as approved by the Bankruptcy Court pursuant to Section 1125 of the Bankruptcy Code and Bankruptcy Rule 3017 as such

disclosure statement may be amended, modified or supplemented from time to time.

1.28. “Disbursing Agent” means any entity acting in its capacity as a disbursing agent or successor disbursing agent under Section V.1.1. of the Plan. The Disbursing Agent under the Plan shall be the Reorganized Debtor.

1.29. “Disputed Claim” means, respectively, any Claim: (a) as to which a Proof of Claim has been Filed and the dollar amount of such Claim, respectively, is not specified in a fixed amount; (b) prior to the deadline to object to such Claim, as to which a Proof of Claim has been Filed and the dollar amount of such Claim is specified in a fixed liquidated amount, the extent to which the stated amount of such Claim exceeds the amount of such Claim listed in the Schedules; and (c) with respect to either a Claim that is listed in the Schedules and/or as to which a Proof of Claim has been Filed, as to which the Debtor or any other party in interest has Filed a timely objection or request for estimation in accordance with the Bankruptcy Code, the Bankruptcy Rules, and/or any order of the Bankruptcy Court, which objection or request for estimation has not been withdrawn or determined by a Final Order.

1.30. “Effective Date” means the first Business Day (a) on which no stay of the Confirmation Order is in effect and (b) that is at least one Business Day after the date on which the conditions specified in Article VII of the Plan have

been satisfied or waived. Notwithstanding anything to the contrary herein, the Effective Date shall occur on or before the six month anniversary of the Confirmation Date.

1.31. “Estate” means the estate created for Debtor pursuant to section 541 of the Bankruptcy Code, and includes all includes all the property, proceeds, profits and rents resulting or derived therefrom that are acquired by the Estate or by the Debtor from the Petition Date to the Effective Date, and by the Estate on or after the Effective Date.

1.32. “File,” “Filed,” “Files,” or “Filing” means properly and timely filed with the Bankruptcy Court in the Chapter 11 Case, as reflected on the official docket of the Bankruptcy Court for the Chapter 11 Case, and served on Persons, as such filing and service are required pursuant to the Bankruptcy Code, Bankruptcy Rules and/or order of the Bankruptcy Court.

1.33. “Final Order” means an order or judgment of the Bankruptcy Court or other applicable court, as entered on the applicable docket, that has not been reversed, stayed, modified or amended, and as to which the time to appeal, petition for certiorari, or move for reargument or rehearing has expired and as to which no appeal, petition for certiorari, or other proceedings for reargument or rehearing shall then be pending or as to which any right to appeal, petition for certiorari, reargue, or rehear shall have been waived in writing in form and

substance satisfactory to the Debtor in the event that an appeal, writ of certiorari, or reargument or rehearing thereof has been sought, such order or judgment of the Bankruptcy Court or other applicable court shall have been affirmed by the highest court to which such order or judgment was appealed, or certiorari has been denied, or from which reargument or rehearing was sought, and the time to take any further appeal, petition for certiorari or move for reargument or rehearing shall have expired.

1.34. “First Tereick Note” means that certain note executed by Debtor in favor of Cory Tereick dated on or about June 24, 2014 in the original principal amount of \$65,000.00.

1.35. “First Tereick Mortgage” means that certain mortgage in favor of Cory Tereick securing the First Tereick Note and recorded against Parcel 52 in the Bureau on July 16, 2014 as Document No. A-53100336.

1.36. “General Unsecured Claim” means any Claim that is not a Secured Claim or an Administrative Expense Claim.

1.37. “Kai Trust” or “Kai Family Trust” means the Kai Family 1998 Trust dated October 5, 1998.

1.38. “Lien” means any mortgage, pledge, deed of trust, assessment, lien, security interest, lease, adverse claim, levy, constructive trust claim, equitable lien, charge or other encumbrance of any kind, or any other type of preferential

arrangement, easement, right of way, conditional sale contract, title retention contract, limitation, or restriction of any kind on title and ownership of property.

1.39. “Ordinary Course Administrative Expenses” means costs or expenses allowable under section 503(b)(1)(A) incurred for goods and services provided to the Debtor in the ordinary course of its business during the Chapter 11 Case from the Petition Date through and including the Effective Date; provided, however, that Ordinary Course Administrative Expenses shall not include Professional Fee Claims

1.40. “Person” means any individual, corporation, limited liability company, general partnership, limited partnership, association, joint stock company, joint venture, estate, trust, the United States Trustee, a government or any political subdivision, governmental unit, official committee appointed by the United States Trustee, unofficial committee of creditors, or the executors, administrators or other legal representatives of any of the foregoing.

1.41. “Petition Date” means April 4, 2016.

1.42. “Plan” means this chapter 11 plan of reorganization for the Debtor, including all exhibits hereto and all documents incorporated by reference to the Plan Supplement, either in their present form or as they may amended, or modified from time to time.

1.43. “Plan Supplement” means the compilation of the forms of certain documents referred to herein as specified in the Plan, as amended, modified or supplemented from time to time, which shall be filed with the Court prior to the Confirmation Hearing.

1.44. “Parcel 21” means that certain approximately 5.95 acre parcel of real property located in Waikoloa, Island of Hawaii, Hawaii and identified with Tax Map Key No. (3) 6-8-002-021.

1.45. “Parcel 52” means certain approximately 10.75 acre parcel of real property located in Waikoloa, Island of Hawaii, Hawaii and identified with Tax Map Key No. (3) 6-8-002-052.

1.46. “Parcel 53” means certain approximately 14.622 acre parcel of real property located in Waikoloa, Island of Hawaii, Hawaii and identified with Tax Map Key No. (3) 6-8-002-053.

1.47. “Pro Rata” means proportionately so that the ratio of (a) cumulative amount of all funds distributed or to be distributed on account of a particular Allowed Claim to (b) the amount of such Allowed Claim is the same as the ration of (x) the cumulative amount of all funds distributed or to be distributed on account of all Allowed Claims in a particular Class to (y) the amount of all Allowed Claims of that Class.

1.48. “Professional Person” means for purposes of this Plan, any professional person employed by the Debtor, or the Committee pursuant to sections 327 or 1103 of the Bankruptcy Code, or otherwise pursuant to an order of the Bankruptcy Court, or any professional or other Person seeking compensation or reimbursement of expenses in connection with the Chapter 11 Case under or pursuant to section 503(b)(4) of the Bankruptcy Code.

1.49. “Professional Fee Claim” means a Claim under sections 330(a), 331, 503 or 1103 of the Bankruptcy Code for compensation of a Professional Person or other Person for services rendered or expenses incurred from the Petition Date in the Chapter 11 Case, through and including the Effective Date.

1.50. “Reorganized Debtor” means the Debtor on or after the Effective Date.

1.51. “Right Of Action” means any and all actions, causes of action, suits, accounts, controversies, agreements, promises, rights to legal remedies, rights to equitable remedies, rights to payment and claims, whether known, unknown, reduced to judgment, not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured and whether asserted or assertable directly or derivatively, in law,

equity or otherwise, and whether commenced or arising before or after the Effective Date.

1.52. “Schedules” means the schedules of assets and liabilities, list of equity security holders and statement of financial affairs filed by the Debtor as amended from time to time.

1.53. “Second Kai Note” means that certain alleged promissory note by the Debtor in favor of the Kai Trust in the principal amount of \$300,000.00 dated August 7, 2013.

1.54. “Second Kai Mortgage” means that certain second mortgage executed by Debtor in favor of the Kai Trust against Parcel 53 as security for the Second Kai Note recorded on November 18, 2013 in the Bureau as Document No. A-50700519.

1.55. “Second Tereick Note” means that certain promissory note by the Debtor in favor of Cory Tereick in the principal amount of \$91,000.00 dated June 25, 2014.

1.56. “Second Tereick Mortgage” means that certain second mortgage executed by Debtor in favor of Cory Tereick against Parcel 52 as security for the Second Tereick Note recorded on October 1, 2014 in the Bureau as Document No. A-53870691.

1.57. “Secured Claim” means a Claim against the Debtor to the extent of the value, as determined by the Bankruptcy Court pursuant to section 506(a) of the Bankruptcy Code, of any interest in property of the Estate securing such Claim.

2. Interpretation; Application of Definitions and Rules of Construction.

Unless otherwise specified, all section, article, schedule or exhibit references in this Plan are to the respective section in, article of, or schedule or exhibit to, this Plan, as the same may be amended, waived or modified from time to time.

The words “herein,” “hereof,” “hereto,” “hereunder,” and others of similar import refer to the Plan as a whole and not to any particular section, subsection, or clause contained in the Plan. A term used herein that is not defined herein shall have the meaning ascribed to that term, if any, in the Bankruptcy Code or Bankruptcy Rules and shall be construed in accordance with the rules of construction applied thereto.

3. Exhibits.

All exhibits and schedules to the Plan, including, the Plan Supplement, are incorporated into and are a part of the Plan as if set forth in full herein.

II.

CLASSIFICATION AND TREATMENT OF CLAIMS

1. Summary of Classification and Treatment.

Administrative Expense Claims are not classified in accordance with Section 1123(a)(1) of the Bankruptcy Code and holders of such claims are not entitled to vote to accept or reject the Plan.

2. Administrative Expense Claims.

2.1. Administrative Expense Claims. Subject to the provisions of sections 330(a), 331 and 503(b) of the Bankruptcy Code, each Allowed Administrative Expense Claim shall be paid by the Debtor or the Reorganized Debtor, as the case may be, in full, in Cash, 30 days after the later of (i) the Effective Date, (ii) the due date thereof in accordance with its terms, (iii) the date upon which such Administrative Claim becomes an Allowed Claim, (iv) for any liability incurred in the ordinary course of business, the date upon which such liability is payable in the ordinary course of such Debtor's business, consistent with past practices or (v) such other date as may be agreed by the parties.

The Administrative Expenses may include compensation claims by Mr. Miroyan and Mr. Smith, which will continue to accrue post-confirmation and be entitled to payment in full before payment to Class 4 General Unsecured Claims.

2.2. Compensation and Reimbursement Claims. On, or as soon as practicable after, the Effective Date, each holder of an Allowed Claim that is based upon awarded compensation or reimbursement of expenses by the Bankruptcy Court in accordance with section 330 or 331 of the Bankruptcy Code or entitled to the priority pursuant to section 503(b)(2), 503(b)(3), 503(b)(4) or 503(b)(5) of the Bankruptcy Code, shall be paid in full, in Cash, the amounts allowed by the Bankruptcy Court: (a) on or as soon as reasonably practicable following the later to occur of (i) the Effective Date, and (ii) the date on which the Bankruptcy Court order allowing such Claim becomes a Final Order; or (b) upon such other terms as may be mutually agreed upon between such holder of an Allowed Administrative Claim and the Debtor.

2.3. Administrative Claim Bar Date. Except as otherwise provided herein, unless previously Filed or paid, requests for payment of Administrative Expense Claims (other than Ordinary Course Administrative Claims) must be Filed pursuant to the procedures specified in the Confirmation Order and the notice of entry of the Confirmation Order, no later than 60 days after the Effective Date (“Administrative Claims Bar Date”); provided, however, that the Administrative Claims Bar Date may be extended from time to time upon the mutual agreement of the Debtor and the applicable holder of an Administrative Expense Claim, or pursuant to an order of the Court. Holders of Administrative

Expense Claims that are required to File a request for payment of such Administrative Expense Claims and that do not File such a request by the applicable Administrative Claims Bar Date will be forever barred from asserting such Administrative Expense Claims against the Debtor, the Estate or their respective property, and such Administrative Expense Claims will be deemed discharged upon completion of the payments provided in the Plan. Unless extended by the Bankruptcy Court or by agreement of the Debtor and the Filing party, objections to such requests must be Filed and served on the requesting party by the later of (A) 120 days after the Effective Date or (B) 60 days after the Filing of the applicable request for payment of Administrative Expense Claims.

2.4 **Priority Tax Claims.** Except to the extent that the holder of an Allowed Priority Tax Claim agrees to a different treatment, the Debtor shall pay to each holder of an Allowed Priority Tax Claim, on account of and in full satisfaction of such Allowed Priority Tax Claim, Cash in an amount equal to such Allowed Priority Tax Claim on the later of: (i) the Effective Date; and (ii) the date such Priority Tax Claim becomes an Allowed Priority Tax Claim (or as soon thereafter as is practicable).

3. **Treatment of Claims and Interests.**

The categories listed below classify Allowed Claims and Interests for all purposes, including voting, confirmation, and distribution pursuant to the Plan:

Class	Treatment
Class 1A: Kai Family Trust Amended First Note Claim (first mortgage Parcel 53)	Impaired - entitled to vote
Class 1B: Kai Family Trust Second Note Claim (second mortgage Parcel 53)	Impaired - entitled to vote
Class 2A: Cory Tereick First Note Claim (first mortgage Parcel 52)	Impaired - entitled to vote
Class 2B: Cory Tereick Second Note Claim (second Parcel 52)	Impaired - entitled to vote
Class 3: Chen Secured Claim (Parcel 21)	Impaired - entitled to vote
Class 4: County of Hawaii Real Property Tax Claim	Impaired - entitled to vote
Class 5: General Unsecured Claims	Impaired - entitled to vote
Class 6: Equity Interest	Unimpaired - not entitled to vote

3.1. Class 1A: Kai Family Trust Amended First Note Claim (First Mortgage Parcel 53).

3.1.1 Classification: Class 1A consists of the Amended First Kai Note which is secured by the Amended First Kai Mortgage on Parcel 53. This Secured Claim is disputed. The asserted balance on the Amended First Kai Note as of July 2016 is approximately \$948,739. The Debtor believes that the value of Parcel 53 is approximately \$6.5 million. The Debtor intends to list Parcel 52 and 53 jointly for sale until an outside sale date of November 30, 2017. If these properties have not been sold by November 30, 2017, Parcels 52 and 53 the Debtor will auction Parcels 52 and 53 as set forth herein.

3.1.2 Treatment: The Debtor will pay the Kai Family Trust an amount equal to the value of its Allowed Secured Claim, provided however that the Kai Family Trust shall not be paid as part of its Allowed Secured Claim, any default interest, late charges or similar fees or expenses, except as may be allowed by the Court. The payment to the Kai Family Trust will be made promptly after the later of: (a) the date the Kai Family Trust Amended First Note Claim becomes an Allowed Secured Claim; and (b) the sale of Parcel 53 pursuant to the Plan. Within 30 days after the Effective Date, the Debtor will commence an adversary proceeding to liquidate (a) the Allowed amounts owed under the First Kai Mortgage and (b) the Counterclaims. The payment shall be made not later than the date that an order determining the Allowed amount of the First Kai Note Claim becomes a Final Order.

Class 1A is impaired, and is entitled to vote to accept or reject to the Plan.

3.2. Class 1B: Kai Family Trust Second Note Claim (Second Mortgage Parcel 53).

3.2.1 Classification: Class 1B consists of the Second Kai Note which is secured by the Second Kai Mortgage on Parcel 53. This Secured Claim is disputed. The asserted balance on the Second Kai Note as of July 2016 is approximately \$300,000. The Debtor believes that the value of Parcel 53 is at least \$6.5 million. The Debtor intends to list Parcel 52 and 53 jointly for sale until an

outside sale date of November 30, 2017. If these properties have not been sold by November 30, 2017, Parcels 52 and 53 the Debtor will auction Parcels 52 and 53 as set forth herein.

3.2.2 Treatment: The Debtor will pay the Kai Family Trust an amount equal to the value of its Allowed Secured Claim, provided however that the Kai Family Trust shall not be paid as part of its Allowed Second Kai Note Claim any default interest, late charges or similar fees or expenses, except as may be allowed by the Court. The payment to the Kai Family Trust will be made promptly after the later of: (a) the date the Second Kai Note Claim becomes an Allowed Secured Claim; and (b) the sale of Parcel 53 pursuant to the Plan. Within 30 days after the Effective Date, the Debtor will commence an adversary proceeding to liquidate (a) the Allowed amounts owed under the First Kai Mortgage and (b) the Counterclaims. The payment shall be made not later than the date that an order determining the Allowed amount of the Second Kai Mortgage becomes a Final Order.

Class 1B is impaired, and is entitled to vote to accept or reject to the Plan.

3.3. Class 2A: Cory Tereick First Note Claim (First Mortgage Parcel 52).

3.3.1 Classification: Class 2A consists of the First Tereick Note which is secured by the First Tereick Mortgage on Parcel 52. This Secured

Claim is disputed. The asserted balance on the First Tereick Note balance was approximately \$65,000 as of June 25, 2014. The Debtor believes that the value of Parcel 52 is approximately \$1,500,000. The Debtor intends to list Parcel 52 and 53 jointly for sale until an outside sale date of November 30, 2017. If these properties have not been sold by November 30, 2017, Parcels 52 and 53 the Debtor will auction Parcels 52 and 53 as set forth herein.

3.3.2 Treatment: The Debtor will pay Cory Tereick an amount equal to the value of its Allowed Secured Claim, provided however that Tereick shall not be paid as part of its Allowed Secured Claim, any default interest, late charges or similar fees or expenses, except as may be allowed by the Court. The payment to Tereick will be made promptly after the later of: (a) the date the First Tereick Note Claim becomes an Allowed Secured Claim; and (b) the sale of Parcel 53 pursuant to the Plan. Within 30 days after the Effective Date, the Debtor will commence an adversary proceeding to liquidate the Allowed amounts owed under the First Tereick Note. The payment shall be made not later than the date that an order determining the Allowed amount of the First Tereick Note becomes a Final Order.

Class 2A is impaired, and is entitled to vote to accept or reject to the Plan.

3.4. Class 2B: Cory Tereick Second Note Claim (Second Mortgage Parcel 52).

3.4.1 Classification: Class 2B consists of the Second Tereick Note which is secured by the Second Tereick Mortgage on Parcel 52. This Secured Claim is undisputed. The asserted balance on the Second Tereick Note balance was approximately \$120,000 as of the Petition Date. The Debtor believes that the value of Parcel 52 is approximately \$1,500,000. The Debtor intends to list Parcel 52 and 53 jointly for sale until an outside sale date of November 30, 2017. If these properties have not been sold by November 30, 2017, Parcels 52 and 53 the Debtor will auction Parcels 52 and 53 as set forth herein.

3.4.2 Treatment: The Debtor will pay Tereick an amount equal to the value of its Allowed Secured Claim, provided however that Tereick shall not be paid as part of its Allowed Secured Claim, any default interest, late charges or similar fees or expenses, except as may be allowed by the Court. The payment to Tereick will be made promptly from the sale of Parcel 53 pursuant to the Plan.

Class 2B is impaired, and is entitled to vote to accept or reject to the Plan.

3.5. **Class 3: Allowed Gang Chen Secured Claim (Parcel 21).**

3.5.1 Classification: Class 3 consists of the Chen Secured Note which is secured by the Chen Mortgage on Parcel 21. This Secured Claim is undisputed. The balance on the Chen Secured Note balance was approximately \$175,000 as of October 10, 2013. The Debtor believes that the value of Parcel 21 is approximately \$500,000. The Debtor intends to list Parcel 21 for sale until an outside sale date of November 30, 2017. If by that time these properties have not been sold, Parcels 21 (together with Parcels 52 and 53) will be auctioned as set forth herein.

3.5.2 Treatment: The Debtor will pay Chen an amount equal to the value of its Allowed Secured Claim, provided however that Chen shall not be paid as part of its Allowed Secured Claim, any default interest, late charges or similar fees or expenses, except as may be allowed by the Court. The payment to Chen will be made promptly from the sale of Parcel 21 pursuant to the Plan.

Class 3 is impaired, and is entitled to vote to accept or reject to the Plan.

3.6. **Class 4: Allowed Real Property Tax Claims.**

3.6.1 Classification: Class 4 consists of Allowed secured real property tax claims of the County of Hawaii. The County of Hawaii has filed a proof of claim no. 4 asserting a priority unsecured status in the amount of

\$42,312.07 allocated as follows: \$7,413.62 for Parcel 21, \$15,097.74 for Parcel 52, and \$19,800.71 for Parcel 53.

3.6.2 Treatment: Holders of Allowed secured real property tax Claims shall be paid from the respective sales proceeds of Parcels 21, 52 & 53.

Class 4 is impaired, and the holders of Allowed Claims in Class 4 are entitled to vote to accept or reject the Plan.

3.7. Class 5: Allowed Unsecured Claims.

3.7.1 Classification: Class 5 consists of Allowed unsecured claims. The Debtor estimates that it has approximately \$359,000 in General Unsecured Claims.

3.7.2 Treatment: Holders of Allowed General Unsecured Claims shall be paid from the sales proceeds of Parcels 52 & 53 only after Allowed secured claims held by the Kai Family Trust, Tereick, and the County of Hawaii are paid in full and shall be paid in full their Allowed Claims with interest at the rate of three percent (3%) per annum in a single lump-sum installment not later than March 31, 2018. Notwithstanding the foregoing, if the remaining sales proceeds of Parcels 52 and 53 are insufficient to pay Allowed General Unsecured Claims in full (after paying the Allowed secured claims of Kai Trust, Tereick, and the County of Hawaii), then Holders of Allowed General Unsecured Claims will be paid their pro rata share of the remaining sales proceeds of Parcels 52 and 53.

Class 5 is impaired, and the holders of Allowed Claims in Class 5 are entitled to vote to accept or reject the Plan.

3.8. Class 6: Equity Interest

Class 6 consists of Debtor's legal, equitable, contractual and other rights in the Estate. The Debtor shall retain its equity interest.

Class 6 is unimpaired and is not entitled to vote or reject the Plan.

III.

ACCEPTANCE OR REJECTION OF THE PLAN

1. Voting Classes.

Each holder of an Allowed Claim in Classes 1A, 1B, 2A, 2B, 3, 4 and 5 shall be entitled to vote to accept or reject the Plan.

2. Voting Rights Of Holders Of Disputed Claims.

Except as otherwise provided in the Plan, pursuant to Bankruptcy Rule 3018(a), a Disputed Claim that falls within the provisions of Section 1.23(a) and (c) hereof will not be counted for purposes of voting on the Plan to the extent it is disputed, unless an order of the Bankruptcy Court is entered after notice and a hearing temporarily allowing the Disputed Claim for voting purposes under Bankruptcy Rule 3018(a). A Disputed Claim that falls within the provisions of Section 1.23(b) hereof will be counted for purposes of voting on the Plan unless and until such Claim becomes a Disputed Claim that falls within the provisions of

Section 1.23(c) hereof. Disallowance of a Disputed Claim for voting purposes is without prejudice to the claimant's right to seek to have its Disputed Claim allowed for purposes of distribution under the Plan.

3. Presumed Acceptance And Rejection Of Plan.

Class 6 is unimpaired under the Plan and, therefore, are conclusively presumed by the Bankruptcy Code to accept the Plan.

4. Nonconsensual Confirmation.

In the event that any impaired class of Claims or class of Equity Interests shall fail to accept the Plan in accordance with section 1129(a)(8) of the Bankruptcy Code, the Debtor reserves the right to (i) request that the Bankruptcy Court confirm the Plan in accordance with section 1129(b) of the Bankruptcy Code, and/or (ii) modify the Plan in accordance with section 1127(a) of the Bankruptcy Code.

IV.

IMPLEMENTATION OF THE PLAN

1. GENERAL MEANS OF IMPLEMENTATION

The Plan will be implemented and consummated through various means contemplated by the Bankruptcy Code, including, without limitation, through the actions and transactions summarized as follows:

1.1. Sale of Property

The Debtor intends to employ Rick Robinson of Sofos Realty to market Parcel 21 at \$550,000.00. To the extent funds are available after the sale of Parcel 21, Debtor intends to use such funds to pay (1) the architect to complete construction drawings of the improvements for Parcel 53 required by the County of Hawaii which would greatly enhance the value of Parcel 53; (2) administrative expenses, and (3) post-petition management fees for Mr. Miroyan and Mr. Smith.

The Debtor will also engage Clark Realty Corporation dba Sperry Van Ness/Clark Commercial Group and Faris Lee Investments, a real estate investment firm (subject to Court approval), to jointly list Parcels 52 and 53 for sale at \$7 million.¹

The sale of Parcels 21, 52, and 53 will be subject to Bankruptcy Court approval. If Parcels 21, 52, and/or 53 remain unsold or not under contract to be sold on November 30, 2017, then the Debtor will auction the unsold parcel(s). Mr. Robinson has also agreed to serve as auctioneer for Parcels 21, 52 and 53 if they are not sold by November 30, 2017 on terms to be negotiated. The Debtor reserves the right to employ another auctioneer but anticipates naming an auctioneer in the Plan Supplement.

The Debtor will follow the timeline below for the auction process:

¹ In 2014, the Faris Lee firm marketed and sold the Waikoloa Highlands Shopping Center, located across the street from the Parcels, for approximately \$24 million.

PROPOSED DATE (on or before)	EVENT
December 1, 2017	Due diligence period begins
January 8, 2018 (or shortly thereafter)	Auctioneer publishes notice in the Honolulu Star-Advertiser (the "Published Notice") of the auction date, time and place for three consecutive weeks. The Published Notice would include all material information, including: (a) property address; (b) TMK numbers; (c) acreage and description; (d) encumbrances and amounts (based on proofs of claim or Schedules); (e) "bid qualifying requirements" (as set forth below); and (f) time and place for the auction. Furthermore, the Published Notice would specifically provide that the sale is subject to Bankruptcy Court approval, that the sale is "AS IS" and that 10% of the highest bid is payable in cash or cashier's check at close of Auction, with the balance paid in cash within 30 days of entry of an order confirming the sale
January 29, 2018	Expiration of period to conduct due diligence
January 31, 2018	Deadline to submit Qualified Bidder Packet. To participate in the Auction, all interested persons must: (i) submit a written bid; (ii) deliver proof of financial ability and corporate authority (if applicable), and (iii) identify of the bidder (collectively, the "Qualified Bidder Packet"). The Qualified Bidder Packet must be submitted to the Auctioneer.
February 2, 2018	Notification of Qualified Bids - the Auctioneer will notify such potential bidder as to whether such potential bidder shall be considered a Qualified Bidder
February 7, 2018	<p><u>Auction, if Overbids.</u></p> <p>If the Auctioneer does not receive at least two Qualified Bids, no Auction will occur. If the Debtor receives only one Qualified Bid, then no Auction will be conducted and the sole Qualified Bid will be the Successful Bid.</p> <p>If the Auctioneer receives at least two Qualified Bid by the Initial Bid Deadline, the Auctioneer will conduct the Auction at the place and time set forth in the Published</p>

	<p>Notice. Bidding at the Auction will be in accordance with the procedures announced at the inception of the auction and will commence with the highest Qualified Bid and continue in all cash increments of not less than \$5,000.00 until all parties have made their final offers; provided however that holders of undisputed secured liens against Parcel(s) may credit bid its secured claims in lieu of providing cash consideration. At the conclusion of the Auction, the Auctioneer shall review and consider each of the Qualified Bids and any increased Qualified Bids and shall determine, which of the Qualified Bid(s) or increased Qualified Bid(s) constitutes the highest and best offer for the Parcel(s) and which of the Qualified Bids or increased Qualified Bids constitutes the second highest and best bid for the Parcel(s). The bidder making the bid that is selected as the highest and best bid by the Auctioneer, or any bid that is ultimately selected by the Auctioneer in accordance with the Bidding Procedures shall be considered the "Successful Bidder," and the bidder that is selected as the second highest and best bid by the Auctioneer shall be considered the "Second Highest Bidder." The Auctioneer shall inform each of the bidders of the decision regarding who are the Successful Bidder and the Second Highest Bidder. The Qualified Bidder Deposit of the Successful Bidder shall be considered the "Successful Bidder Deposit."</p> <p>Notification of Successful Bidder</p>
February 28, 2018	Closing

1.2. Provisions for Treatment of Disputed Claims

Notwithstanding all references in the Plan to Claims that are Allowed, in undertaking the calculations concerning Allowed Claims or Allowed Administrative Expense Claims under the Plan, including the determination of the amount or number of distributions due to the holders of Allowed Claims and

Allowed Administrative Expense Claims, each Disputed Claim shall be treated as if it were an Allowed Claim or Allowed Administrative Expense Claim for purposes of voting on the Plan, except that if the Bankruptcy Court estimates the likely portion of a Disputed Claim to be Allowed or authorized or otherwise determines the amount or number which would constitute a sufficient reserve for a Disputed Claim (which estimates and determinations may be requested by the Reorganized Debtor), such amount or number as determined by the Bankruptcy Court shall be used as to such Claim. Objections to Claims must be filed and served within 180 days of the Effective Date.

1.3. Revesting of Assets.

Except as otherwise provided in the Plan, on and after the Effective Date, all property of the Estate of the Debtor, including all rights of action, and any property acquired by the Debtor under or in connection with the Plan will vest in the Reorganized Debtor free and clear of all Claims, Liens, charges, other encumbrances and interests, except as otherwise provided for herein. On and after the Effective Date, the Reorganized Debtor may operate its business and may use, acquire and dispose of property and compromise or settle any claims or interests without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules, other than restrictions expressly imposed by the Plan or the Confirmation Order.

1.4. Exemption from Transfer Taxes.

Pursuant to section 1146 of the Bankruptcy Code, any transfers from the Debtor to the Reorganized Debtor or any other Person pursuant to the Plan including (a) the creation of any mortgage deed or trust, or other security interest, and (b) the making of any agreement or instrument in furtherance of, or in connection with, this Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp act, real estate transfer tax, mortgage recording tax or other similar tax or governmental assessment.

1.5. Issuance and Execution of Plan Related Documents.

On and after the Confirmation Date, all actions contemplated by the Plan shall be taken by the Debtor and such actions shall be deemed authorized and approved in all respects (subject to the provisions of the Plan), including, without limitation, the execution and the delivery of, and the performance under, all other documents and agreements contemplated by or relating to the Plan.

1.6. Occurrence of the Effective Date.

The Effective Date shall occur on the first Business Day following the satisfaction (or waiver) of the conditions precedent to the occurrence of the Effective Date as set forth in Article VII hereof.

1.7. Occurrence of the Debtor's Discharge.

The Debtor's discharge under the Bankruptcy Code, the Plan, and the Confirmation Order shall occur on the Effective Date.

1.8. Certain Fees and Expenses.

From and after the Effective Date, the expenses incurred in the ordinary course of the Business, fees and expenses of Professional Persons, amounts payable to the U.S. Trustee under 28 U.S.C. § 1930(a)(6), and adequate protection payments, shall be paid by the Debtor, in the ordinary course of business, or pursuant to a Final Order of the Bankruptcy Court.

1.9. Post Confirmation Reports.

The Reorganized Debtor shall file quarterly post-confirmation reports regarding distributions and implementation of the Plan until the case is closed.

1.10. Post-Confirmation Management

From and after the Effective Date, Michael Miroyan shall be the manager and Ryan Smith shall be the CFO of the Reorganized Debtor. Mr. Miroyan's salary shall be \$1,000.00 per month. Mr. Smith's salary shall be \$2,000.00 per month.

V.

DISTRIBUTIONS

1. Reorganized Debtor to Serve as Disbursing Agent.

The Reorganized Debtor shall be the disbursing agent to hold and distribute Cash and such other property as may be distributed pursuant to the Plan.

2. Disputed Claims That Do Not Become Allowed Claims.

To the extent that a Disputed Claim is disallowed, subordinated, voided, voided for the benefit of the Debtor's Estate, or recharacterized, the Debtor shall not make any distribution on account of such Disputed Claim.

Notwithstanding all references in the Plan to Claims that are Allowed, in undertaking the calculations concerning Allowed Claims or Allowed Administrative Expense Claims under the Plan, including the determination of the amount or number of distributions due to the Holders of Allowed Claims and Allowed Administrative Expense Claims, each Disputed Claim shall be treated as if it were an Allowed Claim, except that if the Bankruptcy Court estimates the likely portion of a Disputed Claim to be Allowed or authorized or otherwise determines the amount or number which would constitute a sufficient reserve for a Disputed Claim (which estimates and determinations may be requested by the Reorganized Debtor), such amount or number as determined by the Bankruptcy Court shall be used as to such Claim.

3. No Distributions To Non-Filing Parties.

Pursuant to Bankruptcy Rule 3003(c)(2), (a) no distribution under the Plan shall be made to any party whose claim is listed by the Debtor as disputed, contingent, or unliquidated if such party fails to file a Claim, and (b) any and all Claims of such non-filing parties (described in subsection (a)) shall be disallowed.

4. De Minimis Distributions.

No Cash payment of less than ten dollars (\$10.00) shall be made by the Reorganized Debtor to any holder of a Claim.

5. Record Date For Distributions.

On the Confirmation Date, there shall be no further changes in the holders of record of Claims. The Debtor shall not recognize any transfer of Claims occurring after the Confirmation Date, but shall instead be entitled to recognize and deal for all purposes with only those holders of record stated on the applicable transfer ledgers on the docket of Claims for the Chapter 11 Case as of the Confirmation Date.

6. Saturday, Sunday, or Legal Holiday.

If any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date.

7. Delivery Of Distributions, Address Of Holder.

For purposes of all notices and Distributions under this Plan, the Debtor shall be entitled to rely on the name and address of the holder of each Claim as specified by, and Distributions to holders of Claims shall be made by regular U.S. first class mail to, the following addresses: (1) the address set forth on the respective Filed proof of Claim of such holder; (2) the address set forth in any written notice of address change delivered by the holder to the Debtor after the date of any related Filed proof of Claim, or (3) the address reflected on the Schedules if no proof of Claim is Filed and the Debtor has not received a written notice of a change of address.

VI.

EXECUTORY CONTRACTS AND UNEXPIRED LEASES

1. Rejection Generally

On the Effective Date, all executory contracts or unexpired leases to which the Debtor is a party shall be deemed automatically rejected in accordance with the provisions and requirements of sections 365 and 1123 of the Bankruptcy Code, unless such executory contracts or unexpired leases (i) shall have been previously assumed by the Debtor by Final Order of the Bankruptcy Court, (ii) shall be the subject of a motion to assume pending on or before the Effective Date, (iii) are listed on the schedule of assumed executory contracts or unexpired leases to be

filed with the Plan Supplement, or (iv) are otherwise assumed pursuant to the terms of this Plan. The Debtor reserves the right to amend the Plan Supplement at any time prior to the Confirmation Date.

Entry of the Confirmation Order by the Bankruptcy Court shall constitute approval of the rejections and assumptions contemplated hereby pursuant to sections 365(a) and 1123 of the Bankruptcy Code as of the Effective Date, including assumption of those executory contracts listed in Section IV.1.1. above. Each executory contract and unexpired lease assumed pursuant to this Article VI shall revert in and be fully enforceable by the Reorganized Debtor in accordance with its terms, except as modified by the provisions of this Plan, or any order of the Bankruptcy Court authorizing and providing for its assumption or applicable federal law.

2. Objections to Assumption

Any party in interest wishing to object to the assumption or assignment of an executory contract or unexpired lease, shall File and serve any objection to such assumption by the same deadline and in the same manner established for filing objections to Confirmation, unless the assumption of such executory contract or unexpired lease is the subject of an amendment to the Plan Supplement in which case the deadline is the date that is the earlier of: (a) twenty (20) days after the date

of such amendment; or (b) the day that is five (5) days before the initial Confirmation Hearing.

3. Payments Related To Assumption

Any defaults under each executory contract and unexpired lease to be assumed under the Plan, shall be cured, pursuant to Bankruptcy Code Section 365(b)(1), by payment of the amount ("Cure Amount"), if any, and shall be paid on or as soon as practicable after the Effective Date by the Debtor or on such terms as may be agreed upon between the parties. In the case of a dispute with respect to such Cure Amount set forth in a timely Filed objection to the assumption or assignment, the Debtor shall pay such Cure Amount in Cash on or as soon as practicable after entry of a Final Order resolving the dispute, and approving the assumption.

4. Bar Date For Rejection Claims

Any Claim by any party to an executory contract or unexpired lease rejected by the Debtor hereunder shall be classified in Class 15, provided, however, that: (a) any Claim arising from rejection of an executory contract or unexpired lease which has not been barred by a prior order of the Bankruptcy Court, shall be forever barred and shall not be enforceable unless a proof of Claim is Filed within 30 days after the mailing of the Notice of Effective Date; and (b) nothing herein shall constitute a waiver of the any applicable claims bar date.

VII.

EFFECTIVENESS OF THE PLAN

1. Conditions Precedent.

The Plan shall not become effective (“Effective Date”) unless and until the following conditions shall have been satisfied, or waived by the Debtor in its sole and absolute discretion:

1.1 The Confirmation Order, in form and substance reasonably satisfactory to the Debtor shall be a Final Order.

2. Notice Of Effective Date.

As soon as practicable after the Effective Date has occurred, the Debtor shall File with the Bankruptcy Court, and serve on the members of the various Classes, an informational notice specifying the Effective Date, as a matter of record.

VIII.

CRAMDOWNS

The Debtor requests Confirmation under section 1129(b) of the Bankruptcy Code with respect to any impaired Class that does not accept the Plan pursuant to section 1126 of the Bankruptcy Code. Debtor reserves the right to modify the Plan to the extent, if any, that Confirmation pursuant to section 1129(b) of the Bankruptcy Code requires modification.

IX.

RETENTION OF JURISDICTION AND MISCELLANEOUS MATTERS

1. Retention of Jurisdiction

Notwithstanding the entry of the Confirmation Order or the occurrence of the Effective Date, the Bankruptcy Court shall retain jurisdiction over the Chapter 11 Case and any of the proceedings related to the Chapter 11 Case pursuant to section 1142 of the Bankruptcy Code and 28 U.S.C. § 1334 to the fullest extent permitted by the Bankruptcy Code and other applicable law, including, without limitation, such jurisdiction as is necessary to ensure that the purpose and intent of the Plan are carried out, provided, however, that the Bankruptcy Court shall not have jurisdiction with respect to Tax Claims that arise solely after the Effective Date. Without limiting the generality of the foregoing, the Bankruptcy Court shall retain jurisdiction for the following purposes:

(a) establish the priority or secured or unsecured status of, allow, disallow, determine, liquidate, classify, or estimate any Claim or Administrative Expense Claim;

(b) grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or the Plan, for periods ending on or before the Effective Date;

(c) resolve any matters related to the assumption, assumption and assignment or rejection of any executory contract or unexpired lease to which the Debtor is a party or with respect to which the Debtor may be liable, and to hear, determine and, if necessary, liquidate any Claims or Administrative Expenses arising therefrom;

(d) ensure that Distributions to holders of Allowed Claims or Administrative Expense Claims are made pursuant to the provisions of the Plan, and to effectuate performance of the provisions of the Plan;

(e) decide or resolve any motions, adversary proceedings, contested or litigated matters and any other matters and grant or deny any applications involving the Debtor that may be pending before the Effective Date or that may be commenced thereafter;

(f) except as otherwise provided in the Confirmation Order or in the Plan, enter such orders as may be necessary or appropriate to implement or consummate the provisions of the Plan and all contracts, instruments, releases, indentures and other agreements or documents created in connection with the Plan, the Disclosure Statement, or the Confirmation Order, including, without limitation, any stay orders as may be appropriate in the event that the Confirmation Order is for any reason stayed, revoked, modified or vacated;

(g) resolve any cases, controversies, suits or disputes that may arise in connection with the consummation, interpretation or enforcement of the Plan, or the Confirmation Order, including the release and injunction provisions set forth in and contemplated by the Plan and the Confirmation Order or any Person's rights arising under or obligations incurred in connection with the Plan, or the Confirmation Order;

(h) subject to the restrictions on modifications provided in any contract, instrument, release, indenture or other agreement or document created in connection with the Plan, modify the Plan before or after the Effective Date pursuant to section 1127 of the Bankruptcy Code or modify the Disclosure Statement, the Confirmation Order or any contract, instrument, release, indenture or other agreement or document created in connection with the Plan, the Disclosure Statement, or the Confirmation Order; or remedy any defect or omission or reconcile any inconsistency in any Bankruptcy Court order, the Plan, the Disclosure Statement, or the Confirmation Order, or any contract, instrument, release, indenture or other agreement or document created in connection with the Plan, the Disclosure Statement, or the Confirmation Order, in such manner as may be necessary or appropriate to consummate the Plan;

(i) issue injunctions, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any

Person with the consummation, implementation or enforcement of the Plan or, the Confirmation Order,

(j) consider and act on the compromise and settlement of any Claim against, or Right of Action of the Debtor;

(k) enter such orders as may be necessary or appropriate in connection with the recovery of the assets of the Debtor, wherever located;

(l) determine such other matters as may be provided for in the Confirmation Order or as may from time to time be authorized under the provisions of the Bankruptcy Code or any other applicable law;

(m) enforce all orders, judgments, injunctions, releases, exculpations, indemnifications and rulings issued or entered in connection with the Chapter 11 Case, or the Plan;

(n) determine any other matters that may arise in connection with or relate to the Plan, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, indenture or other agreement or document created in connection with the Plan, the Disclosure Statement, or the Confirmation Order, except as otherwise provided in the Plan;

(o) determine any other matter not inconsistent with the Bankruptcy Code; and

(p) enter an order concluding the Chapter 11 Case.

2. Headings

The headings used in the Plan are inserted for convenience only and neither constitute a portion of the Plan nor in any manner affect the construction of the provisions of the Plan.

3. Notices

All notices and requests in connection with the Plan shall be in writing and shall be hand delivered or sent by mail addressed to:

If to Debtor: Hawaiian Riverbend LLC
P.O. Box 3181
Saratoga, California 95070

Copy to: Wagner Choi & Verbrugge
745 Fort Street, Suite 1900
Honolulu, Hawaii 96813-3820
Attn: Chuck C. Choi
Facsimile: (808) 566-6900
Phone: (808) 533-1877

4. Successors and Assigns

The rights, duties and obligations of any Person named or referred to in the Plan shall be binding upon, and shall inure to the benefit of, the successors and assigns of such Person.

5. Severability of Plan Provisions

If, prior to Confirmation, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void or unenforceable, the Bankruptcy Court will

have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision will then be applicable as altered or interpreted.

Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired or invalidated by such holding, alteration or interpretation. The Confirmation Order will constitute a judicial determination that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to their terms.

6. No Waiver

Neither the failure to list a Claim in the Schedules filed by the Debtor, the failure of any Person to object to any Claim for purposes of voting, the failure of any Person to object to a Claim or Administrative Expense Claim prior to Confirmation or the Effective Date, the failure of any Person to assert a Right of Action prior to Confirmation or the Effective Date, the absence of a proof of Claim having been Filed with respect to a Claim, nor any action or inaction of any Person with respect to a Claim, Administrative Expense Claim, or Right of Action other than a legally effective express waiver or release shall be deemed a waiver or release of the right of the Debtor or its successors or representatives, before or after

solicitation of votes on the Plan or before or after Confirmation or the Effective Date to (a) object to or examine such Claim or Administrative Expense Claim, in whole or in part or (b) retain and either assign or exclusively assert, pursue, prosecute, utilize, otherwise act or otherwise enforce any Rights of Action.

7. Inconsistencies

In the event the terms or provisions of the Plan are inconsistent with the terms and provisions of the exhibits to the Plan or documents executed in connection with the Plan, the terms of such documents shall control; provided, however, in the event of a conflict between either the Plan or such documents or exhibits and the Confirmation Order, the Confirmation Order shall control.

8. Payment of Statutory Fees

All quarterly fees due and payable to the Office of the United States Trustee pursuant to section 1930(a)(6) of title 28 of the United States Code shall be duly paid in full as and when due, as required by section 1129(a)(12) of the Bankruptcy Code.

9. Governing Law

Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules), the laws of the State of Hawaii (without reference to its conflict of law rules) shall govern the construction and implementation of the Plan and any agreements, documents, and instruments

executed in connection with the Plan, unless otherwise specifically provided in such agreements, documents, or instruments.

10. Withholding, Reporting, And Payment Of Taxes

In connection with the Plan and all instruments issued in connection therewith and distributions thereon, the Debtor shall comply with all withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority and all distributions hereunder shall be subject to any such withholding and reporting requirements. The Debtor shall report and pay taxes as may be required by applicable law. In addition, to the extent required by applicable law, reported distributions from such reserves shall include all interest and investment income, if any, attributable to the Cash or property being distributed net of taxes which are, or are estimated to be, due and payable thereon.

X.

EFFECT OF CONFIRMATION

1. Binding Effect of Confirmation

Confirmation will bind the Debtor, all holders of Equity Interests, Claims or Administrative Expense Claims and other parties in interest to the provisions of the Plan whether or not the Equity Interest, Claim or Administrative Expense Claim of such holder is impaired under the Plan and whether or not the holder of such Claim, Administrative Expense Claim or Equity Interest has accepted the Plan.

2. Good Faith

Confirmation of the Plan shall constitute a finding that: (i) this Plan has been proposed by the Debtor in good faith and in compliance with applicable provisions of the Bankruptcy Code; (ii) all Persons' solicitations of acceptances or rejections of this Plan and the offer, issuance, sale, or purchase of a security offered or sold under the Plan have been in good faith and in compliance with applicable provisions of the Bankruptcy Code.

3. No Limitations on Effect of Confirmation

Nothing contained in the Plan will limit the effect of Confirmation as described in section 1141 of the Bankruptcy Code.

4. Discharge of Claims, Administrative Expenses and Interests

Except as provided in the Plan or the Confirmation Order, the Debtor will be discharged from all Claims, Administrative Expense Claims or other debts that arose before the Confirmation Date and all debts of the kind specified in sections 502(g), 502(h) or 502(i) of the Bankruptcy Code, whether or not (a) a proof of Claim based on such debt is Filed or deemed Filed pursuant to section 501 of the Bankruptcy Code, (b) a Claim based on such debt is allowed pursuant to section 502 of the Bankruptcy Code or (c) the holder of a Claim or Administrative Expense Claim based on such debt has accepted the Plan. As of the Effective Date, except as provided in the Plan or the Confirmation Order, all Persons shall be

precluded from asserting against the Debtor, its respective successors or property, any other or further claims, debts, rights, causes of action, liabilities or equity interests based upon any act, omission, transaction or other activity of any nature that occurred prior to the Effective Date.

5. Judicial Determination of Discharge

Except as provided in the Plan or in the Confirmation Order, all Persons shall be precluded from asserting against the Debtor any other or further Claims, Administrative Expense Claims, debts, rights, causes of action, liabilities, or equity interests based on any act, omission, transaction or other activity of any kind or nature that occurred before the Effective Date. Except as provided in the Plan or in the Confirmation Order, the Confirmation Order will be a judicial determination of discharge of all such Claims, Administrative Expense Claims and other debts and liabilities against the Debtor, pursuant to sections 524 and 1141 of the Bankruptcy Code, and such discharges shall void any judgment obtained against the Debtor, at any time, to the extent that such judgment relates to a discharged liability, Claim, or Administrative Expense Claim, effective upon completion of the payments provided in the Plan. Notwithstanding the foregoing, federal and state governmental agencies shall not be subject to the foregoing injunction with respect to the exercise and enforcement of any of their respective regulatory or police rights and powers.

6. Injunctions

6.1 Except as provided in the Plan or the Confirmation Order, as of the Effective Date, all Persons that have held, currently hold or may hold a Claim or other debt or liability, or Equity Interest, that is satisfied or released, as applicable, will be permanently enjoined from taking any of the following actions on account of any such discharged or satisfied Claims, debts or liabilities:

(a) commencing or continuing in any manner any action or other proceeding against the Debtor, the Estate, or their respective property, other than to enforce any right pursuant to the Plan to a distribution; (b) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order against the Debtor, the Estate, or their respective property, other than as permitted pursuant to (a) above; (c) creating, perfecting or enforcing any Lien or encumbrance against the Debtor, the Estate, or their respective property; (d) asserting a setoff, right of subrogation or recoupment of any kind against any debt, liability or obligation due to the Debtor or the Estate; and (e) commencing or continuing any action, in any manner, in any place that does not comply with or is inconsistent with the provisions of the Plan, provided however, that nothing herein shall affect or otherwise impair the existing right of setoff by the United States of mutual pre-petition obligations. Notwithstanding the foregoing, federal and state governmental agencies shall not be subject to the foregoing injunction with respect

to the exercise and enforcement of any of their respective regulatory or police rights and powers.

6.2 As of the Effective Date, all Persons that have held, currently hold or may hold any claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action or liabilities that are released pursuant to the Plan will be permanently enjoined from taking any of the following actions against any Person or its property on account of such released claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action or liabilities, including, without limitation: (a) commencing or continuing in any manner any action or other proceeding; (b) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order; (c) creating, perfecting or enforcing any Lien; (d) asserting a setoff, right of subrogation or recoupment of any kind against any debt, liability or obligation due to any Person; and (e) commencing or continuing any action, in any manner, in any place that does not comply with or is inconsistent with the provisions of the Plan. Notwithstanding the foregoing, federal and state governmental agencies shall not be subject to the foregoing injunction with respect to the exercise and enforcement of any of their respective regulatory or police rights and powers.

XI.

MODIFICATION OR WITHDRAWAL OF PLAN

1. The Debtor may seek to amend or modify the Plan at any time prior to its Confirmation in the manner provided by section 1127 of the Bankruptcy Code or as otherwise permitted by law without additional disclosure pursuant to section 1125 of the Bankruptcy Code, except as the Bankruptcy Court may otherwise order, and the Debtor reserves the right to amend the terms of the Plan or waive any conditions to its Confirmation, effectiveness or consummation if the Debtor determines that such amendments or waivers are necessary or desirable to confirm, effectuate or consummate the Plan.

2. After confirmation of the Plan, the Debtor may apply to the Bankruptcy Court, pursuant to section 1127 of the Bankruptcy Code, to modify the Plan. After confirmation of the Plan, the Debtor may apply to remedy defects or omissions in the Plan or to reconcile inconsistencies in the Plan.

XII.

CONFIRMATION REQUEST

The Debtor requests that the Court confirm the Plan and that it do so, if applicable, pursuant to section 1129(b) of the Bankruptcy Code notwithstanding the rejection of the Plan by any impaired Class.

DATED: San Jose, California, October 6, 2016.

HAWAIIAN RIVERBEND LLC

/s/ Michael Miroyan

Michael Miroyan, Its Manager

Submitted by:

/s/ Chuck C. Choi

CHUCK C. CHOI

ALLISON A. ITO

Substitute Attorneys for Debtor and Debtor-in-Possession

HAWAIIAN RIVERBEND LLC

EXHIBIT TWO

Date Signed:
February 2, 2018

UNITED STATES

DISTRICT OF HAWAII



SO ORDERED.

A handwritten signature in black ink, appearing to read "R. Faris", is written over a horizontal line.

Robert J. Faris
United States Bankruptcy Judge

In re:

HAWAIIAN RIVERBEND, LLC,

Debtor.

Case No. 16-00348

Chapter 11

ORDER DISMISSING CASE

An order to show cause why the court should not (1) direct the appointment of a chapter 11 trustee, (2) convert this case to one under chapter 7, (3) dismiss this case, or (4) grant other appropriate relief was issued on January 10, 2018 (“OSC”).¹

The United States Trustee filed a timely response on January 24, 2018, stating that appointment of a chapter 11 trustee is not authorized by 11 U.S.C. §1104(a) because such trustee can only be appointed prior to the confirmation of a plan and this court confirmed the Debtor’s chapter 11 plan (the “Plan”) on December 23, 2016.²

Secured creditor Cory TerEick filed a timely response on January 23, 2018, explaining that a dismissal with prejudice is his preferred option in order to expedite

¹ Dkt. 170.

² Dkt. 176. The United States Trustee filed a first response to the OSC on January 23, 2018, reporting that the Debtor is currently delinquent on quarterly fees. Dkt. 174. The United States Trustee received a payment of \$325 from the Debtor for quarterly fees on January 25, 2018. Dkt. 184.

liquidation of his collateral, which is subject to a pending Third Circuit foreclosure case in Kona.³

Creditors Kenneth Y. Kai and Tae K. Kai, Trustees of the Kai Family 1998 Trust (“Kai creditors”), filed a timely response on January 24, 2018, urging the court to dismiss the petition because the Debtor has failed to comply with the Plan and continuation of the bankruptcy case will only serve to delay and prejudice the creditors.⁴

Michael Miroyan (“Mr. Miroyan”), an interested party, filed a response on January 24, 2018, requesting a hearing in this matter and claiming that more time is needed to comply with the Plan.⁵ The response attaches declarations of unsecured creditors, stating that: (a) they oppose conversion to chapter 7; and (b) they request that the Debtor receive an additional year to sell or refinance the property.

For the following reasons, I will dismiss the case.

Request for Further Hearing

Mr. Miroyan’s request for a hearing is denied. Section 1112(b) of the Bankruptcy Code provides that the court may dismiss or convert a chapter 11 case “after notice and a hearing,” but section 102(1) authorizes the court to dispense with

³ Dkt. 175.

⁴ Dkt. 177.

⁵ Dkt. 181.

an actual hearing if “appropriate in the particular circumstances.”

No further hearing is necessary in this case. The court held a status conference, at which Mr. Miroyan spoke. The order to show cause gave Mr. Miroyan and all other parties in interest an opportunity to state their positions in writing. Mr. Miroyan has availed himself of that opportunity by filing extensive papers,⁶ all of which I have carefully reviewed. A hearing is not necessary.⁷

Further, Mr. Miroyan sent an email to counsel for the Kai creditors prior to the status conference that was abusive, profane, and threatening.⁸ While the email contains no explicit threats of violence, its tone and content are beyond inappropriate. Mr. Miroyan has forfeited whatever right he might have had to a hearing.

Cause

Cause exists to dismiss Debtor’s bankruptcy case. Section 1112 of the Bankruptcy Code states:

Except as provided in paragraph (2) and subsection (c), on request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case

⁶ Dkt. 181, 183, 185, 188, 189, 190, 192, 192, and 194.

⁷ Section 1112 provides that the court shall convert or dismiss a case “on request of a party in interest.” Section 105(a) makes clear, however, that the court can act sua sponte where appropriate.

⁸ Dkt. 193.

under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

11 U.S.C.A. § 1112(b)(1) (emphasis added).

Subsection (b)(4) contains a nonexclusive list of factors that constitute “cause.” The list includes, among others: gross mismanagement of the estate, failure to comply with an order of the court, inability to effectuate substantial consummation of a confirmed plan, and material default by the debtor with respect to a confirmed plan.

Cause exists to dismiss the case because the Debtor is admittedly in material default of its obligation under the Plan. Debtor failed to conduct a sale of the properties and later failed to submit them for auction. Debtor’s counsel made it clear at the status conference on January 8, 2018 , that Debtor does not intend to comply with the Plan.

Additionally, Mr. Miroyan’s outrageous email to counsel for Kai creditors and his other inappropriate statements in court filings⁹ demonstrate that he should not be administering the estate as a fiduciary for the creditors and other parties in interest.

Appointment of a Chapter 11 Trustee

Appointment of a chapter 11 trustee is not authorized here. Section 1004(a) of

⁹ Dkt. 190.

the Bankruptcy Code provides that the court may appoint a chapter 11 trustee “at any time after the commencement of the case but before confirmation of a plan”

Debtor’s Plan was confirmed on December 23, 2016, and therefore, the appointment of a chapter 11 trustee is not warranted.

Dismissal or Conversion

Dismissal of the case rather than conversion to one under chapter 7 is in the best interest of creditors and the estate.¹⁰

The largest secured creditors of the Debtor, Kai creditors and Cory TerEick, request dismissal of the bankruptcy case.¹¹ They have the largest stake in this bankruptcy case. The secured creditors’ right to pursue a state court action against the Debtor has been delayed (their foreclosure cases have been stayed pending this bankruptcy case). The Debtor has had more than a year to comply with the Plan, but has chosen not to do so. The Debtor has made no substantial efforts to sell the properties in accordance with the Plan.

The interests of the general unsecured creditors are not better served by converting this case to one under chapter 7. Given the amount of the secured claims and the Debtor’s failure to sell the properties, it is highly unlikely that the general

¹⁰ When deciding between dismissal and conversion under 11 U.S.C. § 1112(b), the court must consider the interests of *all* of the creditors. *See In re Owens*, 552 F.3d 958, 961 (9th Cir. 2009).

¹¹ Dkt. 175; Dkt. 177.

unsecured creditors would receive any payments if the case was converted to one under chapter 7. The unsecured creditors apparently prefer to give the Debtor an additional year to sell the properties. But the confirmed Plan provides for only a one year sales period that has already expired and, because the Plan has apparently been “substantially consummated” within the meaning of section 1101(2), the Plan probably cannot be modified.

Therefore, the court will enter a separate judgment DISMISSING this bankruptcy proceeding .

END OF ORDER

EXHIBIT THREE

1 **LAW OFFICE OF WAYNE A. SILVER**

2 Wayne A. Silver (108135)

3 643 Bair Island Road,

4 Suite 403

5 Redwood City, CA 94063

6 Phone: (650) 282-5970

7 Fax: (650) 282-5980

8 Email: ws@waynesilverlaw.com

9 *Attorney for KENNETH Y. KAI and*

10 *TAE K. KAI, Trustees of the Kai Family 1998 Trust*

11 **UNITED STATES BANKRUPTCY COURT**

12 **NORTHERN DISTRICT OF CALIFORNIA**

13 **SAN JOSE DIVISION**

14 In re:

15 MICHAEL HAROUTUN MIROYAN,

16 Debtor.

Case No.: 18-52601-MEH

Chapter 13

RS No. WS110

Date: January 17, 2019

Time: 10:00 a.m.

Court: 3020, Hon. M. Elaine Hammond

17 **MOTION FOR RELIEF FROM STAY**

18 This motion is brought by Kai Family 1998 Trust Dated October 5, 1998 (“Kai Trust”), for
19 full and complete relief from the automatic stay under 11 U.S.C. §362(d)(1) ¹, together with an *in*
20 *rem* order under Code §362(d)(4) (“Motion”), to continue the judicial foreclosure of an undeveloped
21 lot located in Hawaii identified in bankruptcy debtor Michael Haroutun Miroyan’s (“Miroyan”)
22 bankruptcy schedule² A/B, Item 1.4 as: “Empty Land in HI, Lot: 3-6-8-002-053,” referred to herein
23 as “Parcel 53.” Parcel 53 was previously owned by Hawaiian Riverbend, LLC (“HR LLC”),
24 Miroyan’s single member LLC and former Chapter 11 debtor, until Miroyan caused HR LLC to

25 ¹ Further references to Title 11 of the U.S. Code are abbreviated as the “Code.”

26 ² Kai Trust requests the Court take judicial notice of the Miroyan’s bankruptcy schedules in the
27 above captioned Chapter 13 case under Rules 201(b) and 201(d) of the Federal Rules of Evidence,
28 which are made applicable to this proceeding by Rule 9017 of Federal Rules of Bankruptcy
Procedure.

1 fraudulently transfer Parcel 53 to himself for no consideration on or about August 9, 2018. HR LLC
2 is the obligor on long overdue notes secured by Parcel 53 in favor of the Kai Trust, all of which are
3 in default.

4 **I. Statement of Jurisdiction**

5 This Court has jurisdiction over this matter under 28 U.S.C. §§157 and 1334, which is a core
6 proceeding within the meaning of 28 U.S.C. §157(b)(2)(A), (G) and (O) and in which this Court may
7 enter a final judgment. Venue is proper in this District pursuant to 28 U.S.C. §§1408 and 1409. The
8 statutory predicates for the motion are Code §§362(d)(1) and (4), Fed.R.Bankr.Pro. 4001 and
9 Bankruptcy Local Rule 4001-1.

10 **II. Secured Loan Transactions**

11 As set forth in the Declaration of Kenneth Y. Kai filed concurrently herewith (the “Kai
12 Decl.”), HR LLC executed a Promissory Note dated May 3, 2010 in the principal amount
13 \$540,000.00 in favor of the Kai Trust (“Note”). [Kai Decl., ¶4, Exhibit 1] The Note was secured by
14 real property located in Waikoloa, Hawaii, identified by Tax Map Key No. (3) 6-8-002-021 (the
15 “Mortgaged Property”) pursuant to a Real Property Mortgage dated April 28, 2010 (“Mortgage”),
16 executed by HR LLC in favor of the Kai Trust. [Kai Decl., ¶5, Exhibit 2]

17 In late 2012/2013, HR LLC completed its subdivision of the Mortgaged Property into 3
18 separate parcels: (a) an approximately 5.95 acre parcel identified with Tax Map Key No. (3) 6-8-002-
19 021 ("Parcel 21"); (b) an approximately 10.75 acre parcel identified with Tax Map Key No. (3) 6-8-
20 002-052 ("Parcel 52"), and (c) an approximately 14.622 acre parcel identified with Tax Map Key No.
21 (3) 6-8-002-053 (“Parcel 53”). [Kai Decl., ¶6]

22 Kai Trust agreed to release two specific parcels of the Mortgaged Property known as Lots 9-
23 A and 9-B. The remaining property secured by the Mortgage is identified as Tax Map Key No. (3) 6-
24 8-002-053 (Lot 9-C), and hereinafter referred to as "Parcel 53." [Kai Decl., ¶7, Exhibit 3] The Note
25 was amended effective March 1, 2013 in connection with this transaction by increasing the principal
26 amount to \$809,504.00 and adding a balloon payment with a due date of December 1, 2013
27 “Amended Note”). [Kai Decl., ¶8, Exhibit 4]

28 HR LLC subsequently executed another Promissory Note dated August 7, 2013 in the

1 principal amount of \$300,000.00 (“2013 Note”). [Kai Decl., ¶9, Exhibit 5] The 2013 Note was also
2 secured by Parcel 53 pursuant to a Real Property Mortgage dated August 7, 2013 executed by HR
3 LLC in favor of the Kai Trust. [Kai Decl., ¶10, Exhibit 6]

4 **III. Defaults**

5 No payments were ever made by HR LLC under the Note, Amended Note or 2013 Note.
6 Specifically, HR LLC did not make the balloon payment that was due on December 1, 2013 under
7 the Amended Note. Nor did HR LLC ever cure the default after due notice was made by the Kai
8 Trust, through counsel. [Kai Decl., ¶¶11 – 12]

9 As a result of HR LLC’s failure to pay the amounts due and owing, the Kai Trust accelerated
10 the entire balance due under the loan documents. As of July 1, 2016, \$948,739.72 was due and owing
11 by HR LLC to the Kai Trust, consisting of \$840,000.00 in principal plus \$108,739.72 in interest (5%
12 from 12/1/2013 to 7/1/2016). The amount due continues to accrue per diem interest at \$115.07. [Kai
13 Decl., ¶¶13 – 14] An additional \$104,713.70 in interest has accrued in the 910 days between
14 7/1/2016 and 12/28/17, bringing the current unpaid balance to \$1,053.453.42.

15 **IV. Judicial Foreclosure Action and Chapter 11 Bankruptcy**

16 On or about May 1, 2015 the Kai Trust filed Civil Action No. 15-1-0164K against HR LLC
17 in the Circuit Court of the Third Circuit State of Hawaii (“Civil Action”) seeking to foreclose on
18 Parcel 53. The Civil Action was stayed when HR LLC filed for Chapter 11 bankruptcy on or about
19 April 4, 2016 in the U.S. Bankruptcy Court for the District of Hawaii, Case No. 16-00348 (the
20 “Bankruptcy Case”). [Kai Decl., ¶¶15 – 16]

21 HR LLC confirmed a Second Amended Plan of Reorganization dated October 6, 2016
22 (“Plan”) in the Bankruptcy Case. The Plan classified the Kai Trust Claims in Classes 1(a) and 1(b),
23 and provided for the sale or auction of Parcel 53 on or before February 28, 2018. [Kai Decl., ¶¶16 –
24 17, Exhibit 7]

25 HR LLC failed to comply with the Plan and failed to take the necessary steps to sell Parcel
26 53. As a result the Bankruptcy Case was dismissed on or about February 2, 2018. In dismissing the
27 Bankruptcy Case, the Bankruptcy Court found:

28 Cause exists to dismiss the case because the Debtor is admittedly in
material default of its obligation under the Plan. Debtor failed to

1 conduct a sale of the properties and later failed to submit them for
2 auction. Debtor's counsel made it clear at the status conference on
3 January 8, 2018, that Debtor does not intend to comply with the Plan.
4 Additionally, Mr. Miroyan's outrageous email to counsel for Kai
5 creditors and his other inappropriate statements in court filings <sup>[fn.
omitted]</sup> demonstrate that he should not be administering the estate as a
6 fiduciary for the creditors and other parties in interest.

7 [Kai Decl., ¶¶18 – 19, Exhibit 8, p. 4]

8 On or about March 21, 2018 Kai Trust's motion for summary judgment and interlocutory
9 decree of foreclosure was granted in the Civil Action. Andrew Kennedy was appointed as the
10 foreclosure Commissioner. [Kai Decl., ¶20, Exhibit 9]

11 **V. Fraudulent Transfer of Parcel 53**

12 On or about August 9, 2018 Miroyan caused HR LLC to convey Parcel 53 from HR LLC to
13 himself for no consideration. The Court is requested to take judicial notice of the Warranty Deed
14 attached as Exhibit "A" hereto. This was done without notice to, or approval from, anyone affiliated
15 with the Kai Trust. [Kai Decl., ¶21, Exhibit 10]

16 Miroyan filed this Chapter 13 bankruptcy on November 26, 2018, the same day as the
17 scheduled foreclosure sale of Parcel 53, which prevented the foreclosure. [Kai Decl., ¶22, Exhibit
18 11]

19 **VI. Law and Argument in Support of Complete Relief from Stay and *In Rem* Order**

20 By fraudulently transferring Parcel 53 from HR LLC to himself for no consideration and then
21 filing for Chapter 13 bankruptcy, Miroyan has engaged in bad faith conduct designed to hinder,
22 delay and/or defraud the Kai Trust. Kai Trust is therefore entitled to relief from the automatic stay
23 under both Code §362(d)(1) for cause, and an *in rem* order under §362(d)(4).

24 **(A) Miroyan's Bad Faith is Cause to Lift the Stay Under Code §362(d)(1)**

25 The debtor's lack of good faith in filing a bankruptcy petition has often been used as
26 cause for removing the automatic stay. See, e.g., *In re Kemble*, 776 F.2d 802, 807 (9th Cir. 1985)
27 (debtor's dilatory behavior a proper consideration in lifting stay); *Matter of Little Creek Development*
28 *Co.*, 779 F.2d 1068, 1071 (5th Cir. 1986) (lack of good faith constitutes "cause" for lifting stay). If it
 is obvious that a debtor is attempting unreasonably to deter and harass creditors in their bona fide
 efforts to realize upon their securities, good faith does not exist. *In re Thirtieth Place, Inc.*, 30 Bankr.

1 503, 505 (Bankr. App. 9th Cir. 1983) (quoting *In re Loeb Apartments, Inc.*, 89 F.2d 461, 463 (7th
2 Cir. 1937)).

3 Miroyan's bad faith is obvious here. HR LLC's failed Chapter 11 Plan and Bankruptcy
4 Court's findings that Miroyan had no intention of carrying out the Plan by selling or auctioning
5 Parcel 53, HR LLC's failure to make any payments to the Kai Trust on the Note, Amended Note, or
6 2013 Note. [Kai Decl., ¶23], HR LLC's fraudulent transfer of Parcel 53 to Miroyan followed by the
7 filing of this Chapter 13 to invoke the automatic stay and prevent the foreclosure sale scheduled the
8 same day, add up to the requisite bad faith supporting cause under Code §362(d)(1). Filing a
9 bankruptcy case for the sole purpose of invoking the automatic stay and disrupting state court
10 litigation, without intending to use the special powers of the bankruptcy court to resolve or
11 restructure the debtor's financial affairs, constitutes "bad faith." *In re Silberkraus*, 253 B.R. 890, 905
12 (Bankr. C.D. Cal. 2000) (citing cases in support).

13 **(B) Kai Trust is Entitled to an *In Rem* Order Under Code §362(d)(4)**

14 Code § 362(d)(4) provides:

15 (d) On request of a party in interest and after notice and a hearing, the
16 court shall grant relief from the stay . . . such as by terminating,
annulling, modifying, or conditioning such stay. . .

17 (4) with respect to a stay of an act against real property under
18 subsection (a), by a creditor whose claim is secured by an interest in
19 such real property, if the court finds that the filing of the petition was
20 part of a scheme to delay, hinder, or defraud creditors that involved
either—

21 (A) transfer of all or part ownership of, or other interest in, such
22 real property without the consent of the secured creditor or court
approval; or

23 (B) multiple bankruptcy filings affecting such real property.

24 If recorded in compliance with applicable State laws governing notices
25 of interests or liens in real property, an order entered under paragraph
26 (4) shall be binding in any other case under this title purporting to
27 affect such real property filed not later than 2 years after the date of
28 the entry of such order by the court, except that a debtor in a
subsequent case under this title may move for relief from such order
based upon changed circumstances or for good cause shown, after
notice and a hearing.

1 A creditor seeking relief from the stay in a bankruptcy case pursuant to Code § 362(d)(4)
2 must prove that (1) the debtor engaged in a scheme, (2) to delay, hinder or defraud the creditor, and
3 (3) which involved either the transfer of property without the creditor's consent or court approval or
4 multiple filings. If proven, the bankruptcy court may enter an order authorizing the creditor relief
5 from the stay that is "binding in any other case under this title purporting to affect such real property
6 filed not later than 2 years after the date of the entry of such order by the court" *Alakozai v.*
7 *Citizens Equity First Credit Union (In re Alakozai)*, 499 B.R. 698, 702-03 (BAP 9th Cir. 2013)

8 The evidence before this Court establishes each of the required elements justifying *in rem*
9 relief under Code § 362(d)(4). Miroyan caused Parcel 53 to be transferred from HR LLC to himself
10 for no consideration without Kai Trust's consent or court approval. Miroyan waited until the day of
11 the scheduled foreclosure sale in the Civil Action, and then filed this Chapter 13 bankruptcy case the
12 same day to prevent it. This scheme not only defrauded the Kai Trust by transferring Parcel 53 out of
13 HR LLC for no consideration, it also hindered and delayed the Kai Trust from pursuing the judicial
14 foreclosure of Parcel 53 in the Civil Action because of the automatic stay. Miroyan's scheme has
15 thus far successfully prevented the Kai Trust from foreclosing on Parcel 53 for 3-1/2 years,³ without
16 HR LLC having to make a single payment under the Note, Amended Note, or 2013 Note.

17 Given Miroyan's admitted intention not to sell or auction Parcel 53 in contravention of the
18 HR LLC Chapter 11 Plan, and subsequent fraudulent transfer of Parcel 53 from HR LLC to himself
19 for no consideration followed by this Chapter 13 bankruptcy, it is clear that without *in rem* relief
20 under Code § 362(d)(4), Miroyan will continue his pattern of misusing the bankruptcy courts to
21 prevent the Kai Trust from foreclosing on the Property.

22 VII. Request for Relief

23 Kai Trust therefore prays this Court for:

24 1. An order granting this Motion and providing full and complete relief from the stay
25 under Code §362(d)(1) to proceed under applicable non-bankruptcy law to enforce all rights and
26 remedies to foreclose upon and obtain possession of Parcel 53, including but not limited to amending
27 the complaint in the Civil Action to include Miroyan as an additional defendant, and prosecution of

28 ³ The Civil Action was filed on or about May 14, 2015. [Kai Decl., ¶15]

1 the Civil Action to final judgment.

2 2. An order granting this Motion and providing full and complete relief from the stay
3 under Code §362(d)(4), and that such order be effective *in rem* to be binding and effective in any
4 bankruptcy case commenced by or against any bankruptcy debtor who claims any interest in Parcel
5 53 for a period of 180 days from the date of the hearing on this Motion, without further notice, or
6 upon recording of a copy of this Court's order or giving appropriate notice of its entry in compliance
7 with applicable non-bankruptcy law.

8 3. The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

9 4. Such other and further relief as the Court finds fair and equitable.

10 Dated: December 28, 2018

11 /s/ Wayne A. Silver

12 Wayne A. Silver, attorney for *KENNETH Y.*
13 *KAI and TAE K. KAI, Trustees of the Kai*
14 *Family 1998 Trust*

EXHIBIT A

[Warranty Deed Transferring Parcel 53 to Miroyan]

40
copy 7
C



STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED

August 09, 2018 3:29 PM
Doc No(s) A-67950847



/s/ LESLIE T. KOBATA
REGISTRAR

1 2/3 CGG
B-33205881

Conveyance Tax: \$0.00

LAND COURT

AFTER RECORDATION, RETURN BY: MAIL () PICKUP ()

Michael Miroyan
P.O. Box 3181
Saratoga California 95070

S:\CLERICAL\LJNPW\DSA FORMS MASTERS\Warranty deed (rev 6-11) .wpd

TMK No. (3) 6-8-002-053
Subdivision File No.

Total No. of Pages: 87 *me*

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS:

This Deed, made on **August 08, 2018**, by **Hawaiian Riverbend, LLC, a Hawaii limited liability company**, whose address is **P.O. Box 3181 Saratoga California 95070**, with full power to sell, convey, transfer, mortgage, lease, or otherwise deal with real property, hereinafter called the "Grantor", and **Michael Miroyan, a single man**, whose address is **P.O. Box 3181 Saratoga California 95070** hereinafter called the "Grantee".

WITNESSETH:

For TEN DOLLARS (\$10.00) and other good and valuable consideration paid to the Grantor by the Grantee, the receipt of which is hereby acknowledged, the Grantor does hereby grant, bargain, sell and convey unto the Grantee, in fee simple, forever, the property more particularly described in **EXHIBIT "A"**, which is attached to and expressly made a part hereof.

And the revisions, remainders, rents, issues and profits thereof and all of the estate, right, title and interest of the Grantor, both at law and in equity, therein and thereto;

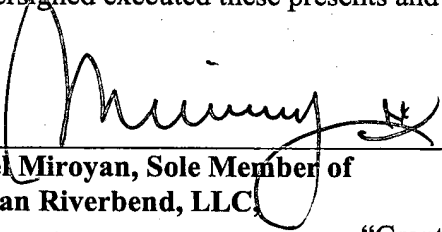
TO HAVE AND TO HOLD the same, together with all buildings, improvements, tenements, rights, easements, hereditaments, privileges and appurtenances thereto belonging or appertaining, or held and enjoyed in connection therewith unto the Grantee according to the tenancy hereinabove set forth, absolutely and in fee simple, forever.

AND the Grantor hereby covenants with the Grantee that the Grantor is lawfully seized in fee simple of the described real and personal property and that the Grantor has good right to convey the same as aforesaid; that the property in free and clear of all encumbrances, except as

may be described in **EXHIBIT "A"**; and the Grantor will WARRANT AND DEFEND the same unto Grantee, forever, against the lawful claims and demands of all persons.

It is understood and agreed that the term "property" shall be deemed to mean and include the property specifically described in **EXHIBIT "A"**, all buildings and improvements thereon (including any personal property described in **EXHIBIT "A"**) and all rights, easements, privileges and appurtenances in connection therewith, that the terms "Grantor" and "Grantee", as and when used herein, or any pronouns used in place thereof, shall mean and include the masculine and/or feminine, the singular or plural number, individuals, firms or corporations, that the rights and obligations of the Grantor and Grantee shall be binding upon and inure to the benefit of their respective estates, heirs, personal representatives, successors in trust and assigns and that where there is more than one Grantor or Grantee, any covenants of the respective party shall be and for all purposes deemed to be joint and several.

IN WITNESS WHEREOF, the undersigned executed these presents and of the day and year first above written.



**Michael Miroyan, Sole Member of
Hawaiian Riverbend, LLC**

"Grantor"



Michael Miroyan

"Grantee"

STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HONOLULU)

On this 08th day of August, 2018, before me personally
appeared Michael Miroyan, to me personally known, who, being
by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the
free act and deed of such person, and if applicable in the capacity shown, having been duly
authorized to execute such instrument in such capacity.



[Official Seal/Stamp]

Signature: [Signature]
Name: Sharon Julian
Notary Public, State of Hawaii
My commission expires: 02/05/2020

NOTARY CERTIFICATION

Document Description: Warranty Deed

☒ Doc. Date: 08/08/2018 or ☐ Undated
No. of Pages: 7

[Signature] 08/09/2018
Signature of Notary Public Date of Notarization

Sharon Julian
Printed Name of Notary Public



[official Seal/Stamp]

EXHIBIT "A"

Legal Description

On Feb 13 2013 the HI county Council approved the this Lot into 3 newly created parcels: TMK # (3)-6-8-002-021 was reduced to 5.95 acres; TMK # (3)-6-8-002-052 created 10.75 acres; TMK # (3)-6-8-002-053 created 14.622 acres.

All of that certain parcel of land situate at Waikoloa, District of South Kohala, Island and County of Hawaii, State of Hawaii, being LOT 9 of the "WAIKOLOA DEVELOPMENT", as shown on File Plan Number 1172, filed in the Bureau of Conveyances of the State of Hawaii, and containing an area of 14.622 acres, more or less.

BEING THE PREMISES ACQUIRED BY DEED WITH COVENANTS AND RESERVATION OF EASEMENTS AND OTHER RIGHTS

GRANTOR: **Waikoloa Mauka, LLC, a Delaware limited liability company**

GRANTEE : **Hawaiian Riverbend, a Hawaii limited liability company**

DATED : **November 12, 2009**

RECORDED : November 23, 2009 as Document No. 2009-179060

1. Real Property Taxes, if any, that may be due and owing.
Tax Key: (3) 6-8-002-053 Area Assessed: 14.622 acres
Tax Classification: AGRICULTURAL
2. Any and all matters not shown in the Indices described in Schedule A.
3. Mineral and water rights of any nature.
4. DESIGNATION OF EASEMENT "E-W-1" (50 feet wide)
PURPOSE : electrical, telephone and water line
SHOWN : on File Plan No. 1172
5. GRANT to WAIKOLOA WATER CO., INC., dated December 20, 1978, recorded in Liber 13374 at Page 441, as amended by instrument dated February 4, 1981, recorded in Liber 15498 at Page 103; granting an easement over said Easement "E-W-1".
6. DESIGNATION OF EASEMENT "E-4" (75 feet wide)
PURPOSE : electrical and telephone
SHOWN : on File Plan No. 1172
7. GRANT TO : HAWAII ELECTRIC LIGHT COMPANY, INC.
DATED : April 27, 1976
RECORDED : Liber 11411 Page 135
GRANTING : an easement for utility purposes over Easement "6" described thereon

8. GRANT TO : WAIKOLOA WATER CO., INC. doing business as WEST HAWAII WATER COMPANY and WAIKOLOA RESORT UTILITIES, INC. doing business as WEST HAWAII UTILITY COMPANY
DATED : February 19, 1998
RECORDED : Document No. 98-028921
GRANTING : an easement for utility purposes over Easement "W-2" described therein
9. GRANT TO : WAIKOLOA RESORT UTILITIES, INC. doing business as WEST HAWAII UTILITY COMPANY
DATED : February 19, 1998
RECORDED : Document No. 98-028918
GRANTING : an easement over only that portion of said Easement "E-W-1" affecting Lot 9 of File Plan No. 1172
10. GRANT TO : VERIZON HAWAII INC. now known as HAWAIIAN TELCOM, INC.
DATED : ---- (acknowledged April 22, 2003 and May 23, 2003)
RECORDED : Document No. 2003-139270
GRANTING : an easement for utility purposes over Easement "1" described therein
11. No vehicular access and planting screen, as shown on Subdivision map 11-001060, approved November 29, 2012.
12. DESIGNATION OF EASEMENT "AE-1"
PURPOSE : access
SHOWN : on Subdivision map 11-001060, approved November 29, 2012
13. The terms and provisions contained in the following:
(A) DEED WITH COVENANTS AND RESERVATION OF EASEMENTS AND OTHER RIGHTS
DATED : September 20, 2005
RECORDED : Document No. 2005-188909
Certain water rights reserved in said Deed have been assigned pursuant to that certain WATER RIGHTS QUITCLAIM dated September 20, 2005, recorded as Document No. 2005-188913, by and between WAIKOLOA LAND & CATTLE CO., "Grantor", and WAIKOLOA WATER CO., INC., and WAIKOLOA RESORT UTILITIES, INC., "Grantee".

(B) GRANT OF RIGHT TO DESIGNATE AND GRANT EASEMENTS
DATED : September 20, 2005
RECORDED : Document No. 2005-188911
PARTIES : WAIKOLOA MAUKA, LLC, "Owner", and WAIKOLOA LAND & CATTLE CO., "WDC"
Said Grant was amended by instrument dated November 29, 2006, recorded as Document No. 2006-220312.
14. The terms and provisions contained in the following:
INSTRUMENT : DECLARATION OF RESTRICTIVE COVENANTS

DATED : December 29, 2008
RECORDED : Document No. 2008-193975

15. The terms and provisions contained in the following:

INSTRUMENT : DISCLOSURE AGREEMENT
DATED : December 29, 2008
RECORDED : Document No. 2008-193976

PARTIES : WAIKOLOA MAUKA, LLC, a Delaware limited liability company, "WML", WQJ2008 INVESTMENT, LLC, a Washington limited liability company, "WQJ2008", UKUMEHAME QUARRY COMPANY LIMITED PARTNERSHIP, a Hawaii limited partnership, "Ukumehame", and collectively with WQJ2008, "Buyer"

16. Historic ceremonial and burial sites and similar matters which an archaeological study and archaeological inspection of the land would disclose.

17. REAL PROPERTY MORTGAGE

MORTGAGOR : HAWAIIAN RIVERBEND, LLC, a Hawaii limited liability company
MORTGAGEE : KENNETH Y. KAI and TAE K. KAI, Trustees, of the Kai Family 1998 Trust dated October 5, 1998
DATED : April 28, 2010
RECORDED : Document No. 2010-062606
AMOUNT : \$540,000.00-covers the land herein besides other lands
ABOVE MORTGAGE AMENDED BY INSTRUMENT
DATED : August 8, 2013
RECORDED : Document No. A-50700518
RE : to increase Loan Amount to \$809,504.00

18. The terms and provisions contained in the following:

INSTRUMENT : JOINT VENTURE AGREEMENT
DATED : April 29, 2010
RECORDED : Document No. 2010-062607
PARTIES : WAIKALO A MAUKA, LC, a Delaware limited liability company ("WM") and HAWAIIAN RIVERBEND, LLC, a Hawaii limited liability company, ("HR")

19. GRANT TO : WAIKOLOA VILLAGE ASSOCIATION, a Hawaii nonprofit corporation

DATED : August 5, 2013
RECORDED : Document No. A-50090859
GRANTING : a nonexclusive right and easement over, under and across the Easement Area being 60 feet wide for utility purposes

20. REAL PROPERTY MORTGAGE
MORTGAGOR : HAWAIIAN RIVERBEND, LLC, a Hawaii limited liability company
MORTGAGEE : KENNETH Y. KAI and TAE K. KAI, Trustees of the Kai Family 1998 Trust dated October 5, 1998
DATED : August 7, 2013
RECORDED : Document No. A-50700519
AMOUNT : \$300,000.00
21. NOTICE OF PENDENCY OF ACTION
PLAINTIFF : KENNETH Y. KAI and TAE K. KAI, Trustees of the Kai Family 1998 Trust
DEFENDANT : HAWAIIAN RIVERBEND, LLC; et al.
DATED : June 3, 2015
FILED : Circuit Court of the Third Circuit, State of Hawaii, Case No. 15-1-0164K, on June 3, 2015
RECORDED : Document No. A-56341008 on June 5, 2015
RE : foreclosure of Mortgage
22. Any unrecorded leases and matters arising from or affecting the same. 0
23. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other matters which a correct survey or archaeological study would disclose.
24. Hawaiian Riverbend, LLC has not yet submitted proper information to the Department of Commerce and Consumer Affairs of the State of Hawaii (Business Registration) for Good Standing status.

EXHIBIT FOUR

1 **LAW OFFICE OF WAYNE A. SILVER**

2 Wayne A. Silver (108135)

3 643 Bair Island Road,

4 Suite 403

5 Redwood City, CA 94063

6 Phone: (650) 282-5970

7 Fax: (650) 282-5980

8 Email: ws@waynesilverlaw.com

9 *Attorney for KENNETH Y. KAI and*

10 *TAE K. KAI, Trustees of the Kai Family 1998 Trust*

11 **UNITED STATES BANKRUPTCY COURT**

12 **NORTHERN DISTRICT OF CALIFORNIA**

13 **SAN JOSE DIVISION**

14 In re:

15 MICHAEL HAROUTUN MIROYAN,

16 Debtor.

Case No.: 18-52601-MEH

Chapter 13

RS No. WS110

Date: March 1, 2019

Time: 9:30 a.m.

Court: 3020, Hon. M. Elaine Hammond

17 **SUPPLEMENTAL BRIEF OF THE KAI FAMILY TRUST**
18 **IN SUPPORT OF MOTION FOR RELIEF FROM STAY**

19 Pursuant to the Court's request after the hearing on January 31, 2019, the Kai Family 1998
20 Trust Dated October 5, 1998 ("Kai Trust"), submits this Supplemental Brief in support of their
21 motion for full and complete relief from the automatic stay under 11 U.S.C. §362(d)(1),¹ together
22 with an *in rem* order under Code §362(d)(4) ("Motion").

23 The Motion seeks relief to continue the judicial foreclosure of an undeveloped lot located in
24 Hawaii identified in bankruptcy debtor Michael Haroutun Miroyan's ("Miroyan") bankruptcy
25 schedule² A/B, Item 1.4 as: "Empty Land in HI, Lot: 3-6-8-002-053," referred to herein as "Parcel

26 ¹ Further references to Title 11 of the U.S. Code are abbreviated as the "Code."

27 ² Kai Trust requests the Court take judicial notice of the Miroyan's bankruptcy schedules and Plan in
28 the above captioned Chapter 13 case under Rules 201(b) and 201(d) of the Federal Rules of
Evidence, which are made applicable to this proceeding by Rule 9017 of Federal Rules of
Bankruptcy Procedure.

53.” Parcel 53 was previously owned by Hawaiian Riverbend, LLC (“HR LLC”), Miroyan’s single member LLC and former Chapter 11 debtor, until Miroyan caused HR LLC to fraudulently transfer Parcel 53 to himself for no consideration on or about August 9, 2018 (See Exhibit “A” to Motion”). HR LLC (not Miroyan) is the obligor on long overdue notes secured by Parcel 53 in favor of the Kai Trust, all of which are in default.

The Motion requested the following relief:³

1. Full and complete relief from the stay under Code §362(d)(1) to proceed under applicable non-bankruptcy law to enforce all rights and remedies to foreclose upon and obtain possession of Parcel 53, including but not limited to amending the complaint in the Civil Action⁴ to include Miroyan as an additional defendant, and prosecution of the Civil Action to final judgment.

2. An order granting this Motion and providing full and complete relief from the stay under Code §362(d)(4), and that such order be effective *in rem* to be binding and effective in any bankruptcy case commenced by or against any bankruptcy debtor who claims any interest in Parcel 53 for a period of 180 days from the date of the hearing on this Motion, without further notice, or upon recording of a copy of this Court’s order or giving appropriate notice of its entry in compliance with applicable non-bankruptcy law.

3. Waiver of the 14-day stay prescribed by FRBP 4001(a)(3).

4. Such other and further relief as the Court found fair and equitable.

Although the Motion requested relief to continue prosecution of the Civil Action to final judgment, the Court questioned the status of the foreclosure in the Civil Action given the transfer of Parcel 53 prior to the November 26, 2018 auction, which occurred a few hours after this Chapter 13 bankruptcy case was filed.⁵

³ See Motion for Relief from Stay filed on December 29, 2019, Docket No. 24, pp. 6:23 – 7:9.

⁴ Civil Action No. 15-1-0164K against HR LLC pending in the Circuit Court of the Third Circuit State of Hawaii seeking to foreclose on Parcel 53, filed on or about May 1, 2015 (“Civil Action”).

⁵ Miroyan’s bankruptcy filing did not stay the Civil Action against HR LLC, because Miroyan wasn’t a party to the Civil Action. See, *In re McCormick*, 381 B.R. 594 (Bankr. S.D.N.Y. 2008); *In re Sun-Ming Sheu*, 2009 Bankr. LEXIS 1703 (Bankr. E.D.N.Y. 2009); *In re Penn*, 2010 Bankr. LEXIS 1546, at *4-5 (Bankr. N.D. Ga. 2010) (“Unless extended by the court in an “unusual situation,” the protections afforded by section 362(a)(1) are “only available to the debtor, not third party defendants or co-defendants.” *Kreiser v. Goldberg*, 478 F.3d 209, 213 (4th Cir. 2007) (quoting *A.H. Robins Co., Inc. v. Piccinin*, 788 F.2d 994, 999 (4th Cir.1986)). A separate legal entity

1 **I. Hawaii Mortgage Law Is Based On the Lien Theory of Mortgages, Therefore HR**
2 **LLC Retained Legal and Equitable Title to Parcel 53 Notwithstanding the Interlocutory**
3 **Decree of Foreclosure and Appointment of the Commissioner In the Civil Action**

4 Hawaii mortgage law is based on the lien theory of mortgages. See *FHLMC v. Transamerica*
5 *Ins. Co.*, 89 Hawai‘i 157, 164, 969 P.2d 1275, 1282 (Haw. 1998); see also *Adair v. Kona Corp.*, 51
6 Haw. 104, 110, 452 P.2d 449, 453 (Haw. 1969). Under the lien theory of mortgages, “the mortgagee
7 is regarded as owning a security interest only and both legal and equitable title remain in the
8 mortgagor until foreclosure.” Restatement (Third) of Property § 4.1(a) at 278 (1999). *Hawai‘i Nat’l*
9 *Bank v. Cook*, 99 Hawai‘i 334, 342-43, 55 P.3d 827, 835-36 (Haw. App. 2000), rev’d on other
10 grounds, 100 Hawai‘i 2, 58 P.3d 60 (Haw. 2002).

11 On default, the mortgagee has only a possessory interest, and ownership of the property
12 remains subject to the mortgagor’s equity of redemption. In order to terminate the mortgagor’s
13 equity of redemption, the mortgagee must bring an action to foreclose the mortgage, obtain a writ of
14 execution for sale of the mortgaged property, and sell the property through foreclosure. *Fed. Home*
15 *Loan Mortg. Corp. v. Transamerica Ins. Co.*, 89 Hawai‘i 157, 164, 969 P.2d 1275, 1282 (Haw.1998)

16 Under Hawaii law, it therefore appears HR LLC retained legal and equitable title to Parcel
17 53, despite the entry of the interlocutory decree of foreclosure and appointment of the Commissioner
18 on March 21, 2018 in the Civil Action. (See Declaration of Kenneth Y. Kai filed concurrently
19 herewith (the “Kai Decl.”), Exhibit 9). The effect of this appointment did no more than grant the
20 Commissioner a possessory interest in Parcel 53, because “the commissioner takes possession of the
21 mortgaged property and preserves the property for the benefit of the person or entity subsequently
22 entitled to it.” *Hawai‘i Nat’l Bank v. Cook*, Id., at 347. The legal and equitable title remained with HR
23 LLC until final resolution of the Civil Action, which means the transfer of Parcel 53 from HR LLC
24 to Miroyan, despite the fact is was fraudulent, rendered the November 26, 2018 auction a nullity.

25 **II. The Warranty Deed from HR LLC to Miroyan Was a Fraudulent Transfer**
26
27

28 that is established to hold property is considered a separate legal entity for that purpose and, should
that legal entity desire bankruptcy protection, it must file its own petition.”

1 Although HR LLC retained legal and equitable title to Parcel 53, the Warranty Deed
2 conveyed by HR LLC to Miroyan is void as to the Kai Trust, because it was a fraudulent conveyance
3 intended to defraud HR LLC's creditors by hindering or delaying the foreclosure proceedings in the
4 Civil Action. As explained by the Hawaii Supreme Court in *Kanamu v. Parke*,

5 A fraudulent conveyance is no conveyance as against the interest
6 intended to be defrauded. It is impossible that these deeds can be
permitted to stand as a security, if they are to be adjudged bad ab initio.

7 . . . [A] deed by which the parties convey with the intention to defraud
8 is void as against creditors. . . . The terms "void" and "voidable" are
9 often used without precision. If a deed is absolutely void, it cannot be
10 the source of a title: if voidable only, as between the parties, it may be.
11 The deed . . . if fraudulent, was void between the parties, **but voidable
only**, as to subsequent purchasers, or creditors, dependent upon the proof
of fraud. 6 Haw. 91, 92-94 (Haw. 1872) (citation omitted) (emphasis
added).

12 Hawaii's Uniform Fraudulent Transfer Act, HRS § 651C-4(a)(1), provides:

13 A transfer made or obligation incurred by a debtor is fraudulent as to a
14 creditor, whether the creditor's claim arose before or after the transfer
15 was made or the obligation was incurred, if the debtor made the transfer
or incurred the obligation with actual intent to hinder, delay, or defraud
any creditor of the debtor.

16 To challenge the validity of the transfer of Parcel 53, which is a question of fact, the Kai
17 Trust will have to join Miroyan as an indispensable party to the Civil Action:

18 "[W]here a creditor alleges a fraudulent transfer of property from a
19 judgment debtor to a transferee who retains title to the subject property
20 or who claims an interest in the property or its proceeds, the transferee
21 is a necessary party to any action seeking to set aside the transfer. Such
22 an action for relief against a transfer alleged to be fraudulent should be
brought pursuant to Hawaii Revised Statutes (HRS) ch. 651C (1985),
23 see supra n.2, and should expressly name the alleged fraudulent
transferees as defendants. Our holding is consistent with established
24 Hawaii law regarding the naming of parties in property disputes. Cf.
Rossiter v. Rossiter, 4 Haw. App. 333, 337, 666 P.2d 617, 620 (1983)
25 (record owner of property was necessary and indispensable party to
26 action affecting her interest in property, and family court had no
jurisdiction to adjudicate questions affecting title to property where
27 record owner not named as party). Fundamental principles of due
28 process require that transferees who claim an interest in real property or
its proceeds have a full and fair opportunity to contest claims of

fraudulent transfer.” *Tanaka v. Nagata*, 76 Hawai‘i 32, 36-37, 868 P.2d 450, 454-55 (Haw. 1994).

Under Hawaii law, the transfer of Parcel 53 from HR LLC to Miroyan is void as to the Kai Trust, but merely voidable as to other creditors. In order to deliver clear and insurable title through foreclosure, the Kai Trust has therefore determined Miroyan must be named as a party to the Civil Action, and the auction conducted again. The Kai Trust has not determined whether or not the fraudulent transfer of Parcel 53 also needs to be avoided, however requests that relief should it become necessary.

III. The *Curtis Factors* Weigh Heavily In Favor of Granting the Motion and Allowing the Civil Action to Proceed to Final Judgment against Both HR LLC and Miroyan

Courts have identified various factors relevant to determining whether the stay should be lifted to allow a creditor to continue pending litigation in a non-bankruptcy forum. The now familiar “twelve factor test” originated in *In re Curtis*, 40 B.R. 795, 799–800 (Bankr.D.Utah 1984)(“*Curtis Factors*”) has been adopted by most courts in the Ninth Circuit. (See, *Newberry v. City of San Bernardino (In re City of San Bernardino)*, 558 B.R. 321, 332 (C.D. Cal. 2016); *In re Plumberex Specialty Products, Inc.*, 311 B.R. 551, 559 (Bankr. C.D. Cal. 2004)).

The Second Circuit first applied the *Curtis Factors* in *In re Sonnox Indus.*, 907 F.2d 1280, 1285 (2d Cir.1990), which has become a leading case at the circuit level. As noted in *Sonnox*, not all of the twelve *Curtis Factors* are relevant in every case. *Id.* at 1286; see *Mazzeo*, 167 F.3d at 143. Nor is a court required to give each of the *Curtis Factors* equal weight in making its determination. *Burger Boys, Inc. v. S. St. Seaport Ltd. Pa. (In re Burger Boys, Inc.)*, 183 B.R. 682, 688 (S.D.N.Y. 1994); *In re N.Y. Med. Group, P.C.*, 265 B.R. 408, 413 (Bankr.S.D.N.Y. 2001).

As discussed below, the *Curtis Factors* as applied to this Motion strongly favor granting the Kai Trust complete relief from stay to add Miroyan as a defendant in the Civil Action, seek avoidance of the fraudulent transfer, and pursue the Civil Action to final judgment.

1. Whether the relief will result in a partial or complete resolution of the issues.

Relief from stay will result in a complete resolution of the Kai Trust’s rights to foreclose on Parcel 53. It will permit the Kai Trust to add Miroyan as a defendant in the Civil Action, and, if necessary, seek avoidance of the fraudulent transfer of Parcel 53 from HR LLC to

1 Miroyan, thereby consolidating all of the necessary parties and claims in the Civil Action. And to
2 the extent HR LLC has alleged claims against the Kai Trust regarding the execution of the secured
3 promissory notes and mortgages,⁶ those claims can and should be addressed in the Civil Action,
4 because HR LLC is not a party in this Bankruptcy Case. Relief from stay will allow a complete
5 resolution of the Kai Trust's claim against Parcel 53 in the Civil Action.

6 **2. The lack of any connection with or interference with the bankruptcy case.**

7 A bankruptcy court must be cognizant of the entire bankruptcy case and its progress,
8 and adjudicate stay relief issues from this perspective. *Santa Clara Cnty. Fair Ass'n v. Sanders (In*
9 *re Santa Clara Cnty. Fair Ass'n)*, 180 B.R. 564, 567 (9th Cir. BAP 1995). In that context, Miroyan
10 admitted in open Court⁷ he engineered and participated in the fraudulent transfer of Parcel 53 from
11 HR LLC to himself. Miroyan's Chapter 13 bankruptcy case was filed in bad faith, and is eventually
12 going to be dismissed or converted. (See for example, First Amended Trustee's Objection to
13 Confirmation filed on 2/5/2019, Docket No. 54, and the Kai Trust's Objection to Plan filed on
14 12/21/2018, Docket No. 28). And since the Action by Written Consent states Miroyan "assumed all
15 of the obligations of the Company [HR LLC]," there is no question he is not eligible to be a debtor
16 under Chapter 13, because his debts far exceed the allowed limits of Code §109(e).⁸ The Court will
17 also note Miroyan failed to disclose his assumed obligations in either his Chapter 13 Plan (dated
18 12/6/18), or Bankruptcy Schedules (filed 12/10/18, Docket No. 13, pp.15 – 19), both listing only
19 \$1,444.00 in unsecured claims.

20 The Kai Trust does not believe the requested relief has or will have any connection or
21 interference with Miroyan's bankruptcy case, because Miroyan's bankruptcy case was filed in bad
22 faith and is going to be dismissed or converted. Moreover, it will ultimately be determined Parcel 53

23
24 ⁶ The Kai Trust contends any such alleged claims "Counterclaims" have either been adjudicated in
25 the Civil Action, or waived and extinguished in the HR LLC Chapter 11 bankruptcy case. (See Kai
26 Trust's Motion in Limine and Supplemental Request for Judicial Notice, filed on 1/29/2019, Docket
27 Nos. 47 and 48, respectively.)

28 ⁷ Miroyan admitted he transferred Parcel 53 from HR LLC to himself. (See, Action by Written
Consent filed on 1/31/2019, Docket No. 51, and Exhibit "A" to the Motion)

⁸ See Kai Decl., Exhibit 7, Order Confirming Second Amended Plan of Reorganization dated
October 6, 2016 and attached Plan, Kai Decl. Exhibit P. 119 (\$359,000 in Unsecured Claims). And
the Kai Trust filed a secured Proof of Claim on 2/4/19 (Claim No. 10) in the amount of \$1,439,688.

1 was fraudulently transferred to Miroyan, and therefore will no longer be property of the bankruptcy
2 estate.

3 **3. Whether the foreign proceeding involves the debtor as a fiduciary.**

4 The Civil Action does not involve Miroyan as a fiduciary.

5 **4. Whether a specialized tribunal has been established to hear the particular cause**
6 **of action and whether that tribunal has the expertise to hear such cases.**

7 The claims in the Civil Action are strictly a matter of Hawaiian law. The causes of
8 action do not involve unsettled issues, nor do they require a specialized tribunal. The Hawaii court
9 has general jurisdiction to decide all of the state law causes of action in the Civil Action. The
10 Hawaii court has the expertise to hear and decide issues arising under Hawaiian law. The optimal
11 court to decide these state law issues is the Hawaii court, which has dealt with the Civil Action for
12 over 4 – 1/2 years.⁹

13 **5. Whether the debtor's insurance carrier has assumed full financial responsibility**
14 **for defending the litigation.**

15 The Kai Trust is not aware of insurance coverage for any of its claims in the Civil
16 Action.

17 **6. Whether the action essentially involves third parties, and the debtor functions**
18 **only as a bailee or conduit for the goods or proceeds in question.**

19 The Civil Action is currently against HR LLC, the obligor on all of the Secured
20 Promissory Notes and Mortgages on Parcel 53 (See Kai Decl., Exhibits 1, 2, 4, 5 and 6). To the
21 extent HR LLC is a necessary party, this Court cannot resolve these issues unless HR LLC is
22 somehow joined.

23 **7. Whether the litigation in another forum would prejudice the interests of other**
24 **creditors, the creditors' committee and other interested parties.**

25 The Kai Trust does not believe resolving these matters in the Civil Action would
26 prejudice other creditors or interested parties.

27 **8. Whether the judgment claim arising from the foreign action is subject to**

28

⁹ The Civil Action was filed on or about May, 1, 2015 (Kai Decl., ¶15).

1 **equitable subordination under Section 510(c).**

2 The Kai Trust does not believe a judgment in the Civil Action is subject to equitable
3 subordination under §510(c).

4 **9. Whether movant's success in the foreign proceeding would result in a judicial**
5 **lien avoidable by the debtor under Section 522(f).**

6 A judgment in the Civil Action would not result in an avoidable judicial lien.

7 **10. The interests of judicial economy and the expeditious and economical**
8 **determination of litigation for the parties.**

9 This factor sharply favors granting The Kai Trust's Motion. The Civil Action
10 progressed to the point of appointment of a Commissioner to conduct the auction of Parcel 53 in
11 Hawaii, where Parcel 53 is located. HR LLC is not a party to this action, but ostensibly owns all of
12 the alleged Counterclaims Miroyan now seeks to assert against the Kai Trust. Deciding these issues
13 in this Court could lead to inconsistent results and multiple appeals. The Motion should be granted
14 to continue the Civil Action.

15 **11. Whether the foreign proceedings have progressed to the point where the parties**
16 **are prepared for trial.**

17 This factor also sharply favors granting the Kai Trust's motion. The Hawaii court has
18 already heard and determined the Kai Trust's Renewed Motion for Summary Judgment and for
19 Interlocutory Decree of Foreclosure in the Civil Action (Kai Decl., Exhibit 9). A Commissioner has
20 been appointed in the Civil Action, acting as a neutral party and an arm of the court. *Hoge v. Kane*
21 *II*, 4 Haw. App. 533, 539, 670 P.2d 36, 40 (1983). The Commissioner has already gone to great
22 lengths to market Parcel 53. (See Declaration of Andrew M. Kennedy filed on 1/26/19, Docket No.
23 40, and supplemental Errata Sheet filed on 1/17/19, Docket No. 44).

24 **12. The impact of the stay on the parties and the "balance of hurt."**

25 Miroyan claims he was forced to transfer Parcel 53 from HR LLC to himself
26 because HR LLC was prevented from appearing without an attorney in the Civil Action. (See
27 Action by Consent, filed on 1/31/2019, Docket No. 51) By granting the Motion and allowing the
28 Kai Trust to join Miroyan as a defendant in the Civil Action, Miroyan will now be permitted to

1 appear and defend himself in the Civil Action without the need to retain counsel.

2 The stay is prejudicial to the Kai Trust, and continues Miroyan's free ride. No payments were
3 ever made by HR LLC under the Note, Amended Note or 2013 Note, and Miroyan never offered to
4 make adequate protection payments either in the HR LLC Bankruptcy Case¹⁰ or this Chapter 13 case.
5 Specifically, HR LLC did not make the balloon payment that was due on December 1, 2013 under
6 the Amended Note. Nor did HR LLC ever cure the default after due notice was made by the Kai
7 Trust, through counsel. [Kai Decl., ¶¶11 – 12]

8 Instead, HR LLC (through Miroyan), filed the HR LLC Bankruptcy that stayed the Civil
9 Action. HR LLC was then able to buy more time with the empty promise Parcel 53 would be sold on
10 or before February 28, 2018 through the confirmed Second Amended Plan of Reorganization dated
11 October 6, 2016 ("Plan"). [Kai Decl., ¶¶16 – 17, Exhibit 7] But as the Bankruptcy Court found in the
12 Order dismissing the HR LLC Bankruptcy, HR LLC (and Miroyan) not only failed to comply with
13 the Plan, there was no intention to sell Parcel 53. [Kai Decl., ¶¶18 – 19, Exhibit 8, p. 4] Miroyan
14 should not be rewarded with the protection of the automatic stay in this bad faith Chapter 13 case
15 under these circumstances, and the Court should grant the Motion.

16 Dated: February 7, 2019

17 /s/ Wayne A. Silver

18 Wayne A. Silver, attorney for *KENNETH Y.*
19 *KAI and TAE K. KAI, Trustees of the Kai*
20 *Family 1998 Trust*

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26
27 ¹⁰ HR LLC (through Miroyan) filed for Chapter 11 bankruptcy on or about April 4, 2016 in the U.S.
28 Bankruptcy Court for the District of Hawaii, Case No. 16-00348 (the "HR LLC Bankruptcy"). [Kai
Decl., ¶¶15 – 16]

CERTIFICATE OF SERVICE BY CM/ECF AND REGULAR MAIL

I, Wayne A. Silver, the undersigned, hereby declare:

I am the attorney for KENNETH Y. KAI and TAE K. KAI, Trustees of the Kai Family 1998 Trust, with offices at 643 Bair Island Road, Suite 403, Redwood City, CA 94063. On February 8, 2019, I caused to be served true and correct copies of the SUPPLEMENTAL BRIEF OF THE KAI FAMILY TRUST IN SUPPORT OF MOTION FOR RELIEF FROM STAY, by means of this Court's electronic transmission to the Notice of Electronic Filing through the Court's transmission facilities, to the parties and/or counsel who are registered CM/ECF users set forth on the ECF/CMS Mailing List obtained from this Court on this date, as follows:

Name	Email Address
Devin Derham-Burk	ctdocs@ch13sj.com
Sean Ferry	bkyecf@rasflaw.com, sferry@ecf.courtdrive.com
Office of the U.S. Trustee / SJ	USTPRegion17.SJ.ECF@usdoj.gov
Wayne A. Silver	w_silver@sbcglobal.net, ws@waynesilverlaw.com

In addition on this date, I served a true and correct copy of the foregoing document on Debtor MICHAEL HAROUTUN MIROYAN, and all creditors requesting notice by mail, by placing true and correct copies thereof enclosed in sealed envelopes, with first-class postage thereon fully prepaid, addressed to:

Michael Haroutun Miroyan
PO Box 3181
Saratoga, CA 95070-1181

Synchrony Bank
c/o PRA Receivables Management, LLC
P.O. Box 41021
Norfolk, VA 23541

and depositing said envelopes for mailing with the U.S. Postal Service at Redwood City, California.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on February 8, 2019 at Redwood City, California.

/s/ Wayne A. Silver
Wayne A. Silver

EXHIBIT FIVE



LAW OFFICE OF WAYNE A. SILVER] CHANGES MADE BY COURT

Wayne A. Silver (108135)
643 Bair Island Road,
Suite 403
Redwood City, CA 94063
Phone: (650) 282-5970
Fax: (650) 282-5980
Email: ws@waynesilverlaw.com

The following constitutes the order of the Court.
Signed: March 15, 2019

M. Elaine Hammond

M. Elaine Hammond
U.S. Bankruptcy Judge

Attorney for KENNETH Y. KAI and Modifications by court. MEH
TAE K. KAI, Trustees of the Kai Family 1998 Trust

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

In re:

MICHAEL HAROUTUN MIROYAN,

Debtor.

Case No.: 18-52601-MEH
Chapter 13

RS No. WS110

Date: March 1, 2019

Time: 10:00 a.m.

Court: 3020, Hon. M. Elaine Hammond

**ORDER GRANTING MOTION FOR RELIEF FROM STAY AND
AWARDING IN REM RELIEF UNDER 11 U.S.C. §362(d)(4)**

The motion of the Kai Family 1998 Trust Dated October 5, 1998 ("Kai Trust"), for full and complete relief from the bankruptcy automatic stay under 11 U.S.C. §362(d)(1), together with an *in rem* order under 11 U.S.C. §362(d)(4) ("Motion"), to continue the judicial foreclosure of an undeveloped lot located in Hawaii identified in bankruptcy debtor Michael Haroutun Miroyan's ("Michael Miroyan") bankruptcy schedule A/B, Item 1.4 as: "Empty Land in HI, Lot: 3-6-8-002-053" and described in the Warranty Deed dated August 9, 2018 attached as Exhibit "A" to the Motion for Relief from Stay filed on December 29, 2018 (Docket No. 24) (referred to herein as "Parcel 53"), came on for continued hearing on March 1, 2019 before the Hon. M. Elaine Hammond, U.S. Bankruptcy Court Judge. Debtor Michael Miroyan appeared *pro per*. Attorney Wayne A. Silver appeared on behalf of the Kai Trust.

The Court having read and reviewed the pleadings, declarations and requests for judicial

1 notice, having heard the arguments of those appearing, and having stated its findings and conclusions
2 on the record under Federal Rule of Bankruptcy Procedure 7052, with good cause appearing, hereby
3 ORDERS:

4 1. The Kai Trust's Motion is GRANTED.

5 2. The Court having analyzed the twelve factor test originated in *In re Curtis*, 40 B.R.
6 795, 799–800 (Bankr.D.Utah 1984), and having found those factors weigh heavily in favor of the
7 Kai Trust, ~~and having found Debtor Michael Miroyan engaged in bad faith~~, grants the Kai Trust full
8 and complete relief from the bankruptcy automatic stay for cause under 11 U.S.C. §362(d)(1) to
9 pursue all rights and remedies to foreclose upon and if necessary obtain possession of Parcel 53, as
10 follows:

11 (a) Continue the prosecution of Civil Action No. 15-1-0164K against Hawaiian
12 Riverbend, LLC in the Circuit Court of the Third Circuit State of Hawaii ("Civil Action") to final
13 judgment;

14 (b) Add debtor Michael Miroyan as a defendant in the Civil Action, amend the complaint
15 in the Civil Action as necessary, and pursue the Civil Action against debtor Michael Miroyan to final
16 judgment;

17 (c) Bring a claim against debtor Michael Miroyan in the Civil Action for avoidance and
18 cancellation of the Warranty Deed dated August 9, 2018 attached as Exhibit "A" to the Motion for
19 Relief from Stay filed on December 29, 2018 (Docket No. 24) that transferred Parcel 53 from
20 Hawaiian Riverbend, LLC to himself; and,

21 (d) Execute on any judgment or interlocutory order in the Civil Action with respect to the
22 foreclosure of Parcel 53 against Hawaiian Riverbend, LLC, debtor Michael Miroyan, and any
23 subsequent transferee of Parcel 53, without further order of this Court.

24 3. The Court having found Michael Miroyan transferred ~~engaged in bad faith by~~
25 ~~transferring~~ Parcel 53 from Hawaiian Riverbend, LLC to himself ~~for no consideration and then~~
26 without consent of the secured creditor or court approval prior to filing for Chapter 13 bankruptcy,
27 and that such conduct was designed to hinder, delay and possibly defraud the Kai Trust, Kai Trust
28 shall have *in rem* relief under 11 U.S.C. §362(d)(4) such that, if recorded in compliance with
applicable State laws governing notices of interests or liens in real property, this Order shall be

1 binding in any other case under Title 11 purporting to affect Parcel 53 by any person or entity filed
2 not later than 2 years after the date of the entry of this Order by this Court, except that a debtor in a
3 subsequent case under Title 11 may move for relief from this Order based upon changed
4 circumstances or for good cause shown, after notice and a hearing.

5 4. Michael Miroyan's Request for Judicial Notice filed on February 28, 2019 (Docket
6 No. 62) is DENIED.

7 5. Michael Miroyan's motions filed on February 27, 2019 (Docket No. 61): (1) to
8 continue the hearing on the Motion; (2) to prohibit a grant of stay relief ~~extend the bankruptcy~~
9 ~~automatic stay~~ for twelve (12) months; and (3) authorize Parcel 53 to be listed for sale with John
10 Miller of Sotheby's Real Estate, are DENIED.

11 6. The Kai Trust's objections to the unsworn Declaration of Michael Miroyan and
12 attachments thereto filed on February 22, 2019 (Docket No. 60) are SUSTAINED.

13 7. ~~The 14-day stay prescribed by FRBP 4001(a)(3) is waived.~~

14 ***END OF ORDER***
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Court Service List

Michael Haroutun Miroyan
PO Box 3181
Saratoga, CA 95070-1181

EXHIBIT SIX

DEVIN DERHAM-BURK #104353
CHAPTER 13 STANDING TRUSTEE
P O Box 50013
San Jose, CA 95150-0013

Telephone: (408) 354-4413
Facsimile: (408) 354-5513

Trustee for Debtor(s)

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA - DIVISION 5

In re:

Michael Haroutun Miroyan

Chapter 13
Case No. 22-50339SLJ

TRUSTEE'S OBJECTION TO
CONFIRMATION WITH CERTIFICATE OF
SERVICE

341 Meeting Date: June 6, 2022 @ 10:30AM
Pre-Hearing Conference Date: June 23, 2022
Pre-Hearing Conference Time: 9:55AM
Place: Telephonic or Video Only
Judge: Stephen L. Johnson

Debtor(s)

Devin Derham-Burk, Trustee in the above matter, objects to the Confirmation of this Plan for the following reasons:

1. The Trustee questions whether the Chapter 13 plan was filed in good faith pursuant to 11 U.S.C. §1325 (a)(3). The Debtor filed a Chapter 13 case (No. 18-52601MEH) on November 26, 2018 which is still active. The Trustee avers that property of the estate cannot be subject to administration separately under two concurrent cases. The Trustee requests that the Debtor dismiss one of the Chapter 13 cases. *NOTE: The Court found that the above referenced case was in violation of 11 U.S.C. §109(e) and required the*

Debtor to convert the matter to a Chapter 11 or the case would be dismissed. The Trustee questions why the Debtor has filed another Chapter 13 with the same debts.

2. The plan is in violation of 11 U.S.C. §1325(a)(6). The Debtor has failed to make his first plan payment. The Trustee is unable to recommend the case for confirmation until such time as the Debtor becomes current with his monthly plan payments.
3. The plan is in violation of 11 U.S.C. §1325(a)(5). The Debtor has listed creditor HSBC on Schedule D; however, said creditor has been omitted from the plan. The Trustee requests Debtor file an Amended Plan to provide for the secured claim of HSBC.
4. The Trustee is unable to determine whether the plan complies with 11 U.S.C. §109(e) or 11 U.S.C. §1325(a)(6). The Debtor has failed to provide a numeric dollar amount for the amount of the claims owed to secured creditor HSBC on Schedule D and Matthew C. Shannon, Esq. on Schedule E/F. Without knowing the amount of the claims, the Trustee cannot determine whether the Debtor is above or below the allowed secured and unsecured debt limits, nor can she accurately determine the term in order to verify that the plan is feasible.
5. The Trustee is unable to administer the plan. The Debtor failed to provide the monthly administrative expense under Section 3.06 of the plan.
6. Debtor's counsel has failed to check *any* box in Section 3.05 of the plan to indicate how he intends to seek approval of fees. The Trustee requests that the plan be amended to accurately show how debtor's counsel intends to seek attorney's fees so that plan feasibility pursuant to 11 U.S.C. § 1325 (a)(6) can be determined.

- 1 7. The Trustee is unable to administer the plan. The Debtor has failed to provide the
2 collateral descriptions, monthly contract installments and the person/people making the
3 payments under Section 3.10 of the plan for the secured obligations owed to Gang Chen
4 and Kai Family Trust.
5
- 6 8. The plan is in violation of 11 U.S.C. §1325(a)(6). The Debtor has failed to list the
7 payments being made directly to secured creditors Gang Chen and Kai Family Trust on
8 Schedule J.
9
- 10 9. The Trustee is unable to determine whether the plan meets the feasibility test in 11 U.S.C.
11 §1325(a)(6) because the plan payments substantially increase during the pendency of the
12 case. The Trustee requests that the debtor file a declaration, signed under penalty of
13 perjury, which explains how the increased plan payments will be funded.
14
- 15 10. In order to assist the Trustee in determining whether the disposable income test in 11
16 U.S.C. §1325(b)(1)(B) and/or the feasibility test in 11 U.S.C. §1325(a)(6) is met, the
17 Trustee requests that the Debtor provide her with a copy of each federal and state income
18 tax return and W-2 form required under applicable law with respect to each tax year of
19 the Debtor's ending while the case is pending confirmation. The tax return shall be
20 provided to her at the same time it is filed with the taxing authority.
21
- 22 11. The Debtor failed to provide copies of income tax returns prior to the 11 U.S.C. §341
23 meeting of creditors. *See separate objection point.* So that the Trustee can verify that the
24 copies that the Debtor will provide are true and correct copies of the returns that were
25 provided to the taxing agencies, the Trustee requests that the returns provided to the
26 Trustee be attached to a declaration signed by the Debtor stating under penalty of perjury
27
28

1 that the returns being provided are true and correct copies of the returns that the Debtor
2 submitted to the taxing authorities.

3
4 12. The Debtor has failed to comply with 11 U.S.C. §521(e)(2)(A)(i) and (B), in that he has
5 not provided the Trustee with a copy of his 2021 federal and state income tax return and
6 W-2 form. Until the Debtor provides the requested information, the Trustee is unable to
7 perform her duties under 11 U.S.C. §1302(b)(1) (incorporating 11 U.S.C. §704(a)(4)) and
8 is unable to recommend confirmation.

9
10 In addition, the Trustee is in receipt of a proof of claim filed by the Internal Revenue
11 Service which states that the Debtor has not filed a tax return for the following tax years:
12 2016, 2017, 2018, 2019 and 2020. The Trustee is unable to recommend the case for
13 confirmation until such time as the Debtor can provide proof that all delinquent tax
14 returns have been filed.

15
16 13. The Trustee requests a copy of the 2021 corporate tax return for the corporation known as
17 Hawaiian Riverbend LLC.

18
19 14. The Trustee requests a balance sheet for the corporation known as Hawaiian Riverbend
20 LLC as of March 31, 2022.

21
22 15. The Trustee requests copies of profit and loss statements for the corporation known as
23 Hawaiian Riverbend LLC for the following months: November 2021, December 2021,
24 January 2022, February 2022, March 2022 and April 2022.

25
26 16. The Trustee is unable to determine if the plan meets the liquidation test in 11 U.S.C.
27 §1325(a)(4) and requests that the Debtor provide her with a copy of whatever evidence
28

1 the Debtor used to determine the \$6,000,000.00 value of the corporation known as
2 Hawaiian Riverbend LLC/real property associated with the corporation (14.66 acres of
3 commercial zoned land) listed on Schedule A/B.

4
5 17. The Trustee is unable to determine if the plan meets the liquidation test in 11 U.S.C.
6 §1325(a)(4) and requests that the Debtor provide her with a copy of whatever evidence
7 the Debtor used to determine the \$1,000,000.00 value of the real property located at 62-
8 2280 Kanehoa Street, Kamuela, HI, 96743, listed on Schedule A/B.

9
10 18. The Trustee is unable to determine if the plan meets the liquidation test in 11 U.S.C.
11 §1325(a)(4) and requests that the Debtor provide her with a copy of whatever evidence
12 the Debtor used to determine the \$1,750,000.00 value of the real property located at
13 “Empty Lot in Hawaii Lot: 3-6-8-002-021”, listed on Schedule A/B.

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15
16 Dated: June 2, 2022

/S/ Devin Derham-Burk

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Chapter 13 Trustee

CERTIFICATE OF SERVICE BY MAIL

I declare that I am over the age of 18 years, not a party to the within case; my business address is 105 Cooper Court, Los Gatos, California 95032. I served a copy of the within Trustee's Objection to Confirmation by placing same in an envelope in the U.S. Mail at Los Gatos, California on June 2, 2022.

Said envelopes were addressed as follows:

Michael Miroyan
P O Box 3181
Saratoga, CA 95070

Law Offices of Michael Jay Berger
9454 Wilshire Blvd 6th Floor
Beverly Hills, CA 90212

/S/ Lesley Pace
Office of Devin Derham-Burk, Trustee

EXHIBIT SEVEN

1 MICHAEL MIROYAN

2 P.O. Box 3181

3 SARATOGA, CA. 95070-1181

4 Tel: (408) 913-3123

5 E-mail: MAC8881@mc.com

6 Plaintiff in propria persona

FILED E-FILING

JUN 21 2019

SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTH DISTRICT OF CALIFORNIA
SAN JOSE OFFICE

ADR

C 19 03626

United States District Court
Northern District of California - San Jose

10 MICHAEL MIROYAN, INDIVIDUALLY,
11 AND AS MANAGER AND OWNER OF
12 100% OF THE MEMBERSHIP INTERESTS
13 OF HAWAIIAN RIVERBEND, LLC AND
14 ON BEHALF OF THE GENERAL PUBLIC
15 ACTING AS A PRIVATE ATTORNEY GENERAL,

16 Plaintiff

17 vs. TAE KAI KENNETH KAI

18 Robert D.S. Kim, ~~Matthew Shannon~~

19 ~~Matthew Shannon~~, MATTHEW SHANNON

20 WAYNE SILVER, MICHAEL CARROLL, QUANG HANG

21 HANG, DAVID LUCAS, MICHAEL

22 SCHUSTER, ANDREW KENNEDY,

23 PAUL SALLA JR., AND TITLE GUARANTEE

24 AND TRUST TITLE CO., AND DOES 1-100

25 inclusive.

26 Defendants

CASE No:

COMPLAINT in Law & Equity
FOR DAMAGES, DECLATORY
AND INJUNCTIVE RELIEF
FOR VIOLATION AND DEPRIVATION
OF CIVIL AND CONSTITUTIONAL RIGHTS
(BIVENS ACTION)

2) VIOLATION OF ELDER ADULT
ABUSE CALIFORNIA LAW

3) VIOLATION OF CALIF. & HAWAII
CONSTITUTIONAL LAW

4) DENIAL OF ACCESS TO
THE COURTS

5) DEPRIVATION OF DUE
PROCESS RIGHTS

6) CONSPIRACY TO DEPRIVE
CIVIL RIGHTS

7) DENIAL OF EQUAL PROTECTION
UNDER THE LAW

8) FRAUD, CONSPIRACY TO
COMMIT FRAUD, TORT CLAIMS

9) REQUEST FOR PERMANENT INJUNCTION
(JURY TRIAL REQUEST)

7.2) Tortious Interference w/ bonafide business

7.5) Breach of CONTRACT; Breach of fiduciary duty

for violation of rights; 10) Declaratory

Permanent Injunction; (12) request for Counsel

1 Plaintiff Michael Miroyan, INDIVIDUALLY AND on
 2 behalf of the General Public, Acting AS A Private Attorney
 3 General Alleges:

4 ~~Pl~~ Plaintiff Michael Miroyan is an individual, 67 years
 5 of age and currently resides in Santa Clara County, CA
 6 where he has lived since 1957. He was raised in SARA-
 7 toga, CA. as the first of 3 boys raised by Bernita and
 8 Markes Miroyan, a Calif. Licensed Attorney for over 30 yrs.
 9 Michael did well in school, was a likeable fellow and was
 10 elected student body President of the 1200 students at
 11 Saratoga High School 1969-1970. He also achieved the
 12 RANK of Eagle Scout was President of the Key Club,
 13 varsity letters in Soccer, Tennis, Wrestling and
 14 went to college at Univ. of Calif @ Santa Barbara for 1 yr
 15 and then transferred to Stanford University for his
 16 undergraduate education in 1971, majoring in Political
 17 Science. Michael Miroyan made some good choices
 18 and some poor choices and then in 1998 at the age of 46
 19 he started his career as a real estate developer.

20 (See Exhibit 1 Resume of MM)

21 Between 1998-2007 when the real estate
 22 market took a violent turn for the worse... the
 23 worst recession in 40 yrs... in those 9 years, Michael
 24 Miroyan completed 11 (eleven) subdivisions, 421 residential
 25 units and over \$20 million dollars in constructions loans and
 26 jobs for the community - all based on and because of
 27 his guts, his savvy, his initiative, persistence and
 28 skills in real estate. Quite an accomplishment by a man

1 who began at age 46 and finished at age 55. Michael
2 MIROYAN has always concentrated on providing a
3 significant public benefit and has earned all his
4 properties and income.

5 In July 2005, MIROYAN landed his
6 biggest acquisition of his life when he bought
7 13,767 acres from WAIKOLOA Cattle Co. & WAIKOLOA
8 Development Co for \$60 million dollars. Michael
9 MIROYAN handled all the negotiations w/ the seller
10 himself and at the end of the day he was the
11 first and only one on the contract and overnight
12 that purchase made Michael MIROYAN and his
13 UKRAINIAN PARTNERS the 5th largest property owner
14 in the state of Hawaii.

15 In Sept. 2005, MAI APPRAISER Halstrom
16 appraised the 13,767 acres conservatively at \$164 million
17 \$104 million dollars more than what we paid for the
18 property and Michael MIROYAN'S skills at land
19 acquisition and his business acumen were in plain
20 sight for all to see. He had made his partners
21 and himself \$104 million ^{in Sept. '05} on a \$60 million purchase.

22 MIROYAN then sold the WAIKOLOA Village
23 properties in 2006 on behalf of the partnership
24 and he raised \$252 million dollars in offers for the
25 800 acres in the village... one offer of \$100 million
26 from Pacific Century Group is attached here (Ex. B)
27
28

1 For anyone to portray Michael Miroyan other than
 2 AN ASTUTE, SAVVY AND HONORABLE BUSINESSMAN, IS
 3 AN ABSOLUTE LIE. None of the people involved in this
 4 CASE - NO ONE - has done what Miroyan has
 5 done. They have not brought \$60 million cash
 6 to the Big Island; Nor received \$100 million dollar
 7 offers - none of them have Miroyan's land acquisition
 8 skills nor his vision or his guts and all they
 9 can do is make or take money off of his creations.

10 Miroyan is a rascal to his associates and even
 11 his enemies - greedy, pathetic enemies make
 12 money off his efforts.

13 "When you drink from the well, remember
 14 the man who built it." Chinese proverb

15 This case is about greed AND the extent to
 16 which people will go to get their hands on money, lots
 17 of money, Michael Miroyan's money - HIS LAND -
 18 that he earned and that which they conspire to steal.

19 Miroyan had to sue his business
 20 partners in 2008 because they weren't honoring
 21 their agreements. In 2009, Miroyan settled
 22 and received 31.3 acres in Waikoloa Village
 23 as the majority of his settlement. TMK # 6-8-02-21
 24 the property went into his wholly owned
 25 Hawaiian Riverbank, LLC formed by his California
 26 attorney name in NOV. 2009.

27 Miroyan needed \$300,000 to pay his
 28 ex partners as part of the settlement & invited the
 Kai's, JAE & Kenneth to participate with the
 hope & belief Miroyan could pay back some

\$400 in personal unsecured notes that Miroyan owed the Kai's and because of the drastic market change in 2007, was heretofore unable to do.

A deal was struck! Miroyan gave the Kai's 50% membership interests w/ his now 50% of HR, LLC AND he gave them the 1st lien position of lender also. Kai's put up \$360,000 and Miroyan gave them a \$540,000 mortgage 50% return (\$180,000) all due in 3 yrs. May 2013.

As part of the contractual agreement, a membership purchase agreement was prepared and duly signed along w/ the operating agreement, etc.

Miroyan was to be Manager w/ a \$3500/mo salary. He & planning consultant Sidney Fuke, were to change the zoning to commercial on 14.66 AC and subdivide the 31.3 into 3 parcels.

The Kai's were to pay bills when asked by the MOR for the accounting salaries properly taxes MOR's issuing of a "capital call" Eschew closed in May 2010. The Kai's learned of this transaction thru Michael Miroyan only and they thanked him by stabbing him in the back and killing him. He knew because they lied so good.

By the Spring of 2012 the Kai's had surreptitiously hired attorneys Michael Caudle and Matthew Shannon to assist them in the stealing of the commercial property about to be rezoned.

"No Good Deed goes Unpunished." The adage finds particular relevance here as the Greedy Kai's breached their fiduciary duty to Miroyan their fellow member of the LLC w/ a clear agreed upon goal in sight by hiring lawyers w/out disclosing it to Miroyan and then the four of them conspiring to steal the property which was set to go to the Planning Commission for approval in NOV. 2012.

Observe the torturous interference by the Kai's and their hidden snake attorneys as the Kai's quit all funding in July 2012 and go into a flagrant breach of the MPA. This breach of contract is designed to sour and greatly slow down the project. They will kill it slowly. Miroyan has little savings and w/out his salary will soon be financially strapped as he went all in on the project to be able to pay back Kai's rather than getting more money from his settlement w/ his ex-partners. Never in his wildest dreams could he conceive the Kai's would backstab him when he is paying back unsecured notes that most others would have walked away from.

Miroyan issues cap calls in July and in Sept. '12 but the Kai's don't fund. They want to be lender only because Miroyan later found out - they couldn't foreclose on themselves, so

they had to come out of the LLC and to this end w/ lies and fraud and breaches and obfuscated trickery they hoodwinked Miroyan to becoming Lender only and Miroyan raising their mortgage by \$650,000 without the KA's putting up 10%!!

There is no money trail for the increase in mortgage. This is Lender fraud and conspiracy to defraud and interference w/ Miroyan's business advantage and these lawyers are coaching and breaking the law from Spring 2012 until Jan. 2015 when they finally surface.

Quang Hung Hark is a Calif. notary who the KA's and/or their attorneys paid to fraudulently notarize Miroyan's signature on the \$900,000 note he signed when he believed on Aug 7, 2013 that they were finally in agreement. Quang Hung's forgery of the notarization of Miroyan's signature is fraud; it's illegal and renders the amended mortgage and note as an illegal instrument and it is therefore void. With the purchase of Quang's loyalties to the fraud scheme there are now 5 co-conspirators. Miroyan didn't realize any of this at the time - he knew nothing. When he signed on Aug 7, 2013 he specifically did not notarize because the payback date had not been agreed upon. The 2nd mortgage he did notarize and sign because it was due on 3 yrs w/ a subordination clause in it. But to back he did not notarize. Secrecy

2) The main cause of action in this lawsuit is two-pronged: it is against the Kai Family Trust and the 2 trustees Ken and Tae for fraud, for breach of Contract, of fiduciary duty, for ~~integrity~~ of ~~the~~ ^{my} ~~one~~ ^{one} ~~side~~ ^{side} business practices, for taking advantage of my business advantage, for not releasing the mortgages which caused me irreparable damage and to lose the lawsuit which Miryan went to trial on where he lost ~~the~~ \$80,000 and \$1.5 million and the second prong is against the Hon Robert DS Kim for 1983 Civil Rights violations 42 USC 1983 civil rights violations.

3) Defendant Toe Kai and Defendant Ken Kai are both living here in Santa Clara County and have done so for the last 30 years just like Plaintiff Miroyan. All deals were discussed and agreed upon in Santa Clara County. All contracts were signed in Santa Clara County. All monies changed hand in Santa Clara County and all parties live in Santa Clara County including the notary Quang Hung Hong.

4) Therefore Venue is proper in Santa Clara County
5) at all times Matthew Shannon and Michael Cangel
worked together for the LA's since 2012 and both
work in Honolulu and their conduct is violative
of their oaths to the Hawaii & US Constitution.
Both have joined the Conspiracy to defraud
Mirova and both have committed overt
acts in furtherance of their dirty goal, the
theft of an Elderly Man's land, which is elder abuse.

6) Both Dr. Ken and Tai Kai as well as both of their miscreant attorneys Shannon and Carroll are being sued in their individual capacity also for all of them knowingly and willingly breaking the law and more all for their love of someone else's money.

7) Notary Quang has yet to perjure himself but HIROYAN is sure he will and for his forgery of the notary of Hiroyan's signature he should pay dearly for the note amended mortgage would not have been recorded w/out it.

8) Title Guarantee and Trust is complicit in this fraud because one of their employees took over Hiroyan's escrow and gave it to the FA's side and put the amended mortgage in their oversight pouch all without Hiroyan's consent or knowledge and while his back was turned embroiled in the lawsuit over his ranch, the amended mortgage was signed on Aug 7, 2013. It was recorded NOV. 18, 2013 it was recorded 101 days after Hiroyan signed!! Why? Why wait so long? Because that's when HIROYAN was embroiled in trial.

Sneaky, sneaky and dirty - are the FA's and their greaseball attorneys. The amended mortgage is void - it's an illegal instrument.

8) Yet Judge Robert Kim has done everything he

1
 2 Can to prevent Miroyan from even having
 3 access to the Court, let alone a fair day
 4 in court. The litany of allegations against
 5 Robert Kim, whom Miroyan is suing in his
 6 individual as well as official capacity cannot
 7 all be delineated here but will be in the first
 8 amended complaint. But here are a few
 9 of the standouts by this judge who under the
 10 color of law and authority denies Miroyan
 11 every the most miniscule of due process
 12 rights nor equal protection under the bill
 13 of rights. (Doesn't that tell the speech - ~~the~~
 14 Judge Kim obliterates it!! And does not
 15 allow Miroyan access to petition the Court for
 16 his grievances. Judge Kim has joined the
 17 conspiracy to defraud Miroyan of the
 18 property he earned and the must now be
 19 removed due to this lawsuit against him.
 20 9) Defendant Robert DS Kim has purposely denied
 21 Miroyan access to the Court. Defendant Kim knows
 22 that Miroyan has been "blacklisted" which is
 23 tantamount to being a "leper" and as such I
 24 have been banished; ex-communicated and no
 25 one will touch me or my case. This coupled w/
 26 Miroyan's financial woes makes it impossible
 27 to hire an attorney and yet that is exactly
 28 what Defendant Kim demands!! If so much

1 easier to win when the opposing side has no
 2 voice! These are bedrock constitutional
 3 violations of the basic and cherished rights all
 4 Americans enjoy. It's what makes our country
 5 great and Defendant Kim will have none
 6 of it.
 7 10) Who has blacklisted Miroyan... that scary
 8 word from the witch hunt McCarthy hearings
 9 70 years ago from the 1950's. Even then McCarthy
 10 stood up and said it was he who was doing the
 11 enquiring re: Russian spies. But here it is but
 12 a shadow - no one is talking to Miroyan but
 13 Miroyan believes he knows who is doing
 14 it - this banishment and exile because it
 15 has to be the one or the group that covets the
 16 Hacc. of Comm. that is the subject of ~~Case #15-0164 K. Kai vs. HR, LLC (Miroyan)~~
 17 Case #15-0164 K. Kai vs. HR, LLC (Miroyan)
 18 The Kai's are trying to steal Hacc. of Comm.
 19 Comm. money worth \$6 million for the \$1 million
 20 they are owed supposedly and that is their
 21 goal. The Kai's are in no danger of losing
 22 their secured 1st mortgage plus interest but
 23 they want more... bring on the forgery by the
 24 notary - observe his date where he lies
 25 and say Miroyan appeared before him on
 26 Aug. 10, 2013! Miroyan was negotiating w/ the
 27 Kai's for 90 days after that until NOV 2013 not
 28

knowing the Lai's had fraudulently had his signature notarized and had no intent of making a deal w/ Miroyan - they waited and waited and string Miroyan out and then bam! Let the guillotine fall when Miroyan was preoccupied w/ his trial.

- 11) Note * The amended mortgage for \$900,000 filed via T&T's overnight pouch on Nov 18, 1/2 was all due and payable \$900,000 all due in eleven days on Dec. 1, 2013. Now do really expect anyone to believe Miroyan recorded and agreed to \$900,000 payoff in 11 days?? These are the obstacles when you cheat and lie and swindle... there's always glitches. (See Ex. D: First amendment of Promissory Note)
- 12) Miroyan has filed a police report w/ St. Police Fraud Dept re: Notary Q. Hung Hong and also w/ the Secretary of State's Office. (See Ex. D) ^{Police Report}
- 13) Judge and Defendant Robert Kim allowed HR's attorney Paul Sulla Jr to withdraw in April 2018 at a hearing Miroyan knew nothing about. Kim likes to hold Court w/o Miroyan, the true owner being there or even being aware of the crooked shepherders. Defendant Kim allowed Sulla to withdraw knowing the LLC would have no voice, less than 60 days before the Court confirmation hearing on companion case Terwick v. HR, LLC #14-0429K and the result was of course devastating. Miroyan lost a \$1.9m

- 1 a \$1.9 million dollar 11 acre parcel for \$120,000
 2 and got not a dime out of it.
 3 14) Defendant Kim should not let the lie
 4 get defenseless like this and the order he signed
 5 drawn up by Sulla says its in compliance
 6 w/ Rule 65. That's false.
 7 It's a lie. Rule 25 calls for the LLC's Manager
 8 Mironov to have signed the order also saying he is
 9 ok with it. See 'Ex. E' order.
 10 Mironov never knew it was going
 11 on because Sulla was working against
 12 his own client HR & Mironov and Defendant
 13 Kim was leading the lopsided street mugging
 14 of Mironov and his hard earned assets.
 15 15) Faced w/ this thievery in broad daylight and
 16 the ignoring of a \$1.5 million sale across the street
 17 from Mironov's HR property was outrageous
 18 because you can't ignore the facts. Both
 19 they did and Defendant Kim adopted the
 20 fraudulent BPO of crooked real estate Broker
 21 David Lucas for \$240,000 and ignored the fact
 22 of the April 2019 sale of \$1.5 million which showed a
 23 huge disparity on the theft of Mironov's land.
 24 16) Andrew Kennedy & Michael Schuster are crooked
 25 Commissioners on the scam.
 26 17) Wayne Silver has lied several times in federal
 27 BK Court while advancing the crooked agenda of
 28 Kai, Shannon, Carol, Hang, et al.

1 14.) I reserve the right to amend this complaint
2 as the evidence unfolds or as I care to amend.
3
4

5
6
7 6/21/19 San Jose, Ca.
8
9

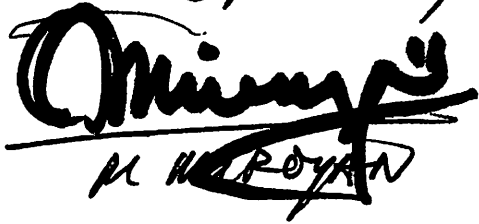
Respectfully,
Submitted,

M. HARPOYAN

EXHIBIT EIGHT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MICHAEL MIROYAN,

Plaintiff,

v.

TAE KAI, et al.,

Defendants.

Case No. [3:19-cv-03626-WHO](#)

ORDER DISMISSING CASE

Re: Dkt. No. 27

On September 11, 2019, I dismissed pro se plaintiff Michael Miroyan's complaint for lack of federal subject matter jurisdiction.¹ Dkt. No. 22. Miroyan pleaded federal claims against Judge Robert D.S. Kim of the Third Circuit in Hawaii, but there was no evidence in the docket that Judge Kim had been served, Miroyan had alleged no facts to support the claims, and the claims seemed to be barred. The remaining claims were based in state law, and in the clear absence of diversity jurisdiction,² I lacked jurisdiction over them. In that Order, I gave Miroyan until October 2, 2019 to file a first amended complaint. On October 1, Miroyan requested additional time to amend; I granted his request in part and gave him until October 16 to file an amended complaint.³ See Dkt. Nos. 23, 24.

On October 15, 2019, Miroyan filed several documents. See Dkt. Nos. 27, 28, 29. One is titled, "Motion to extend time due to change of circumstances for an additional 14 days to have

¹ Miroyan failed to appear at the hearing that day.

² The complaint pleads that both Miroyan and some defendants live in California. See Dkt. No. 1 at 2, 8.

³ He also appeared, unscheduled, at my Case Management Conference calendar that day; I advised him that I had granted him a two-week extension along with permission to file electronically. Dkt. No. 26.

1 Plaintiff file the first amended complaint, w/ the order attached.” Dkt. No. 27. Miroyan wrote that
2 he needed more time to draft the complaint detailing a complicated dispute that has been going on
3 for years. He complained that Judge Kim should have stepped down from the Hawaii case and
4 that he signed a secret order without informing Miroyan. According to Miroyan, “outrageous
5 crimes” have been committed against him in state court in Hawaii, and “this Court or the Ninth
6 Circuit must delay [Judge Kim] because the guy has to withstand scrutiny and he cannot.” *Id.* at 3.
7 Miroyan also attached a foreclosure judgment in Hawaii case along with an email he sent to an
8 address associated with the Hawaii state courts.⁴ Dkt. No. 28.

9 I will dismiss Miroyan’s case with prejudice for four reasons. First, I already denied the
10 request that Miroyan made in his most recent filings; in his earlier request, he also asked for a
11 November 1 deadline to file an amended complaint, and I ordered that he do so by October 16.
12 Despite his contention that there was a “change of circumstances,” Miroyan has presented no
13 reasons why I should reconsider that decision.

14 Second, I am not persuaded by Miroyan’s assertion that he needs more time to lay out the
15 complicated facts of his case. Miroyan is the plaintiff. Even in his original complaint, filed on
16 June 21, 2019, he wrote, “The litany of allegations against Robert Kim, whom Miroyan is suing in
17 his individual as well as official capacity, cannot all be delineated here but will be in the first
18 amended complaint.” Dkt. No. 1 at 10. Accordingly, Miroyan has been aware from the beginning
19 that his claims against Judge Kim would require more factual support, and he has had more than
20 four months to develop a complaint that properly lays out those allegations.

21 Third, as of the date of this Order—later than that of his requested extension—Miroyan has
22 not filed an amended complaint.

23 Finally, and most importantly, Miroyan’s filings—most notably the judgment from the
24 Hawaii case—make it abundantly clear that he is seeking federal court intervention into decisions
25 made by a state court judge in a state court case. *See* Dkt. No. 27 at 3 (“This Court or the Ninth
26

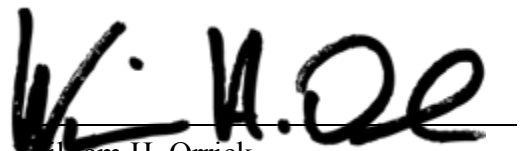
27 ⁴ Miroyan also included a notice to the Clerk where he writes that he has “dropped” his urgent
28 request for two more weeks to file an amended complaint. Dkt. No. 29. Based on the other
filings, Miroyan meant that he dropped *off* the documents at the Clerk’s Office.

1 Circuit must delay [Judge Kim] because the guy has to withstand scrutiny and he cannot.”). The
2 *Rooker-Feldman* doctrine bars such actions. *Kougasian v. TMSL, Inc.*, 359 F.3d 1136, 1139 (9th
3 Cir. 2004) (noting that the *Rooker-Feldman* doctrine bars federal district courts “from exercising
4 subject matter jurisdiction over a suit that is a de facto appeal from a state court judgment”);
5 *Henrichs v. Valley View Dev.*, 474 F.3d 609, 616 (9th Cir. 2007) (holding that *Rooker-Feldman*
6 barred a claim that “would require the district court to determine that the state court’s decision was
7 wrong and thus void”). In addition, in none of his filings does Miroyan allege any facts showing
8 that Judge Kim either took nonjudicial actions or took judicial actions “in the complete absence of
9 all jurisdiction” in order to overcome the judicial immunity bar. *See Mireles v. Waco*, 502 U.S. 9,
10 11-12 (1991).

11 By failing to amend his complaint in the nearly two months since my Order, Miroyan has
12 failed to prosecute his case as required by Federal Rule of Civil Procedure 41(b). His filings,
13 which fail to provide a basis for federal jurisdiction, instead show that his claims against Judge
14 Kim are barred. For all of these reasons, this case is DISMISSED WITH PREJUDICE.

15 **IT IS SO ORDERED.**

16 Dated: November 5, 2019

17
18 
19 William H. Orrick
United States District Judge

United States District Court
Northern District of California